The Solicitors' Journal

VOL. 91 Saturday, February 1, 1947 No. 5

CONTENTS

CURRENT TOPICS

Mr. F. O. Langley

MR. FREDERICK OSWALD LANGLEY, Metropolitan Police Magistrate at Old Street since 1932, who died on 22nd January, was a magistrate of character whose aim was the performance of his duty to the public and to the persons who came before him as complainants and defendants. He set himself a high standard and never failed to attain it. He was only sixty-three when he died, and the loss of such a devoted public servant will be felt the more severely. He was educated at Uppingham and Gonville and Caius, Cambridge. He served throughout the 1914–18 war, won the M.C. and was twice mentioned in dispatches. He was also awarded the Legion of Honour. From 1921 to 1923 he was Law Officer at Singapore, and he describes his experiences in the delightful little book "Singapore to Shoreditch," which he wrote not only with wit, but with considerable literary ability. From 1906 to 1922 he contributed short verses and articles to *Punch*. He was also Chancellor of the Diocese of Lichfield at one time and later Chancellor of the Diocese of Ripon. The profession mourn him as a magistrate with a high sense of honour, as well as a man of great charm, and many people who had appeared before him will feel the loss of so great a friend of all.

Premiums for Repairs

AN abuse, or, in modern jargon, a racket, has started in certain parts of the Midlands, with regard to house repairs. Solicitors can do something towards scotching the snake, if not killing it, by warning their clients against signing forms for such services before taking advice. We are indebted to the *Birmingham Sunday Mercury* of 15th December, 1946, for a report of the activities of certain property repair companies who undertake to keep properties in full repair for an annual premium which varies according to the value of the house. In the case of the less reputable of these companies the usual victim is the housewife, as it is in the case of all sorts of agreements that have been peddled round in the past and will continue to be peddled round so long as there are people who are credulous enough to believe that there are those who will give them something for nothing, or at any rate for very little. There is no doubt that there are many genuine companies who provide property repair services of an adequate character at reasonable annual premiums. The contracts providing for such services need not be complicated or obscure, and the reputable repairer will indicate to his customer in plain language exactly what he is getting for his money. The beguiling of housewives on new housing estates with imposing brochures and plausible arguments to sign complicated contracts binding them to go on paying premiums for five or even ten years for services explained in small type on the back of the brochure is a process familiar to solicitors who have appeared for defendants to claims for small advertisements payments, pre-Hire Purchase Act cases and other similar litigation which at one time littered the county courts. In this case one of the more discreditable features of this racket is that the agent who procures the signature explains that the services provided include redecoration, while the small print of the actual agreement excludes the principal's responsibility for statements of his agent, and states that decorations are not included. The obvious victims are residents in new houses where little, if any, repairs are needed. It is difficult to understand why such contracts are ever signed, but the fact remains that they are, and, as the *Birmingham Sunday Mercury* points out, "the victims are going to the Poor Man's Lawyer with complaints of demands for second premiums and of repairs which have never been carried out." In advising such persons, *L'Estrange* v. *Graucob* [1934] 2 K.B. 394, is a case to be remembered.

Control of Civil Building

IN Circular 8/47, issued by the Ministry of Health on 20th January, 1947, to all local authorities in England, it is stated that, while the general instructions regarding restrictions on the issue of building licences remain unchanged, the scope of the licensing functions delegated to local authorities has been extended, full information on all licences issued will be supplied to them, and they will be authorised to institute proceedings in respect of contraventions of the regulation. The Control of Building Operations (No. 8) Order, 1947, dated 15th January, 1947 (S.R. & O., 1947, No. 74), extends for a further six months the present "free" allowances within which certain building work may be carried out without a civil building licence. The effect of the order is that between 1st February, 1947, and 31st July, 1947, work may be done on any single property as defined in the order if its cost, together with the cost of any other work done without licence on that same property during the six months period, does not exceed £10; and, in addition, work costing a total of not more than £2 in any one month during the period may be carried out without a licence. This £2 monthly allowance is non-cumulative. From 1st February, 1947, any work carried out by unpaid labour in excess of the "free" limits is subject to licence, but where a local authority is satisfied that an owner has the materials in his possession or is able to obtain components for a prefabricated structure, and that he does not propose to use any paid labour, it is suggested that a licence should not ordinarily be refused. As from 1st February, 1947, the Minister of Works authorises local housing authorities to issue licences for the licensing of the following classes of civil building work situated within the area of the authority: (*a*) all licensable work, the cost of which does not exceed £100; and (*b*) all work to private

dwellings (including construction, reconstruction, alteration, decoration, repair and maintenance) and also all work which is ancillary or appertaining to a dwelling, e.g., the erection of a private garage, greenhouse, wall round the garden of a house, etc., without limitation of cost. The term "private dwelling" does not include hotels, hostels, boarding-houses or holiday camps. Local authorities will be reimbursed any actual "out-of-pocket" expenses incurred in connection with the conduct of legal proceedings in the courts. Claims under this head should include fees to private firms of solicitors, counsel, expenses of witnesses (other than employees of the council) and any other actual "out-of-pocket" expenses (not being expenses or fees of officers in the employment of the local authority) which may be incurred in connection with the prosecution. If a case is dismissed and costs are awarded against the council, these costs will also be reimbursed.

Wording of Licences

PRACTITIONERS in the magistrates' courts will appreciate the necessity of clarity in official licences and will applaud the reasons which inspired the Ministry of Health in the above circular to local authorities on civil building control to include a note on the wording of licences. The note states that the licence should be made out in the name of the building owner (i.e., the person paying the cost of the work), and care should be taken that it is properly completed. A copy of the licence should be sent to the builder indicated on the application form and the *original* licence should be sent to the building owner. The work intended to be covered by the licence should be described in detail on the licence itself or on a schedule or specification annexed to, and expressly referred to in, the licence. The circular states that loose or ambiguous wording of a licence may completely stop the possibility of proceedings in the event of failure to observe its provisions. The greatest danger is the use of expressions such as "etc.," which the courts incline to interpret as allowing the licensee the widest possible scope in carrying out work to a property. In no circumstances should the expression "etc." ever be employed. Other ambiguous expressions are, for example, "to carry out necessary repairs," "minimum work to make premises habitable" or "to carry out work in accordance with specification" (which is not identified in or annexed to the licence). Words such as "necessary," "minimum" and "habitable" in the foregoing illustrations are in themselves meaningless and give licensees the greatest possible latitude in interpreting what they can do under the licence. In this connection it is important to bear in mind that the condition that the cost of the work is not to exceed a stated amount does not counteract the danger of a badly worded licence. To exceed the stated cost is at the most a technical offence if the defence can successfully argue that no work outside the scope of the licence has in fact been done. A final word of warning is that in no circumstances should a licensing authority agree verbally (without subsequent confirmation in writing) to the alteration of a licence or to the carrying out of any work within the scope of reg. 56A. If, after the issue of a licence, the licensing authority agrees to modify the work authorised by the licence, the permitted modifications should always be communicated to the applicant *in writing* quoting the number of the licence to which the modifications relate.

The "Lie Detector"

IN the first issue of a new publication called "Crime Review," an article by ELGAR BROWN and ROLAND NICHOLSON entitled "The Lie Detector is a Liar," raises a question which in its most general aspect will be of increasing public importance so long as the tendency persists to regard scientists as omnipotent and infallible. The "lie detector" was devised twenty years ago and records variations in blood pressure and respiration while a suspect is being questioned. It appears that a member of the Chicago Police Scientific Crime Detector tricked the machine by muscular movements of contraction and pressures which affected his blood pressure and respiration, so that he portrayed himself through the machine alternately as a hardened criminal, and as the narrator of events which he knew to be false. A system was therefore devised of inflated bladders placed under the suspect's forearms and thighs and connected with graphs to record muscular exertions, to correct any deception deliberately practised on the lie-detector. Jurists, the writers admit, have long frowned on evidence obtained by such devices, and a judicial comment in cases in U.S. Courts in 1923 and 1933 was quoted, in which lie detector graphs were rejected. The court held in both cases that the test had not gained sufficient scientific recognition to enable it to be used in evidence. It is right that, in investigating questions on which a man's life or liberty may depend, a conservative attitude should be adopted towards controversial questions as to admissibility. New-fangled methods should not be admitted merely because they are scientific, and when, as in the case of the encephalograph, they are admitted, this should be done subject to such weight being attached to their records as the court thinks fit. Psychology is both an infant and an inexact science, and for many years to come the courts will have to accept its experiments with the greatest reserve and caution.

Health in Offices

A MATTER which interests solicitors as much as any other professional workers is that of conditions of work of themselves and their employees. According to Mr. A. STEPHEN SMITH, secretary of the National Federation of Professional Workers, a body representing 400,000 non-manual workers, about half the offices in London and other parts of the country are unsatisfactory by any proper and decent standard of conditions. Many of them, he stated, could be brought up to a minimum standard. Mr. Smith was giving evidence before a Home Office inquiry into the health, welfare and safety of employees. On the other hand, Dr. CHARLES WHITE, the Medical Officer of Health for the City of London, said that if all offices in the city were to be brought up to a certain standard within the next six months or a year a very large number of the offices would have to go out of business. Mr. Smith said that the Ministry of Health had not reminded local authorities of their duty to inspect offices since 1937. One of the matters to which he adverted was that of underground and enclosed rooms, which, he said, had a bad psychological effect on workers. He also referred to the necessity for facilities for boiling water and washing up, as well as a canteen, where the office was large enough, and cloak-room accommodation, where a staff numbered fifty or more. All these are important, no doubt, but so long as office accommodation is in short supply and great demand, so long will the tendency continue to use every available office, without the same regard to standards as formerly prevailed. The problem of accommodation can only be solved by building, and that, as everyone now knows, will take a long time.

Workmen's Compensation: Supplementary Payments

AN announcement by the Ministry of National Insurance made shortly after the New Year points out that the Workmen's Compensation (Temporary Increases) Act, 1943, which was due to expire on 31st December, 1946, is continued in force by s. 89 of the National Insurance (Industrial Injuries) Act, 1946. The earlier Act provides for payment by employers of certain supplementary allowances to workmen entitled to weekly payments of compensation (subject to the modifications contained in s. 13 of the Family Allowances Act, 1945), and for increases in the amount payable where death results from the injury.

Recent Decisions

In *Lloyd* v. *Lloyd and Hill* on 16th January (*The Times*, 17th January), HODSON, J. held that condoned adultery was revived by desertion in spite of the fact that the respondent wife a few days after the desertion offered to return. His lordship granted a decree *nisi* and awarded £200 damages against the co-respondent.

In a case before the Judicial Committee of the Privy Council, LORD THANKERTON, LORD PORTER, LORD SIMONDS, Sir MADHAVAN NAIR and Sir JOHN BEAUMONT, on 20th January (*The Times*, 21st January), it was held that the Indian Army Act intended the findings of a court martial as and when confirmed by the proper confirming officer to be final, subject only to the power of revision for which the Act provided, and there was no room for an appeal to His Majesty in Council consistently with the subject-matter and scheme of the Act.

In *Furbey* v. *Hoey*, on 21st January (*The Times*, 22nd January), a Divisional Court (the LORD CHIEF JUSTICE and HUMPHREYS and LEWIS, JJ.), held that where an excise officer visiting a " bottle party " at a night club after 11 p.m. filled in a form of order for liquor and a messenger took the order to the appellant wine merchant's place of business, the liquor was sold at the wine merchant's premises and that quarter sessions were wrong in finding that the excise offence against s. 50 (3) of the Finance (1909–10) Act, 1910, had been committed by selling at the night club without a licence.

In *Admiralty Commissioners* v. *Cunard White Star, Ltd.*, PILCHER, J., sitting with the Elder Brethren of Trinity House on 21st January (*The Times*, 22nd January), held that the " Queen Mary " was not to blame for a collision in 1942 in the Atlantic, off the north of Ireland, when she cut one of her escort cruisers in two, but that the escort cruiser was to blame (1) for a bad look-out ; (2) for failing to starboard in due time or sufficiently ; and (3) for putting her wheel to port at the last. His lordship said that it was axiomatic that under ordinary convoy conditions it was the duty of faster and more manœuvrable escort vessels to keep out of the way of the units of the convoy. The co-relative duty of the latter was to keep station with each other, whether the convoy was on a straight course or zig-zagging.

In *John T. Ellis, Ltd.* v. *Hinds* on 22nd January (p. 68 of this issue), a Divisional Court (the LORD CHIEF JUSTICE and HUMPHREYS and LEWIS, JJ.) held that where an insurance policy taken out by the appellant company against third-party risks contained an exceptions clause and the company had permitted a youth under seventeen years of age to drive the insured vehicle, and the appellant company had not inquired whether he had a licence to drive, they had not " recklessly " omitted to make that inquiry and the exceptions clause placed no duty on the insured company to make inquiries, the result of which would enable the insurers to take advantage of the exceptions clause. They were therefore not guilty of the offence of permitting the youth to use the motor vehicle when there was not in force in relation to its user a policy of insurance complying with Pt. II of the Road Traffic Act, 1930.

In *Staynings* v. *Minister of Pensions*, on 23rd January (*The Times*, 24th January), DENNING, J., held, dismissing an appeal from a pensions appeal tribunal, that the appellant, who contracted stomach trouble, as he claimed, from his conditions of war service in Iceland, was not entitled to a pension on the ground that his disability was attributable to a war risk injury within the meaning of s. 1 (2) (*d*) of the Pensions (Mercantile Marine) Act, 1942, amending the Pensions (Navy, Army, Air Force and Mercantile Marine) Act, 1939, as being due to " the existence on board ship of . . . conditions . . . which would be abnormal in time of peace." The tribunal had found that the appellant was suffering from duodenitis of constitutional origin and that it was not caused by any factors of his service. His lordship held that none of the conditions causing the illness were conditions " on board ship . . . which would be abnormal in time of peace."

In *Buchler* v. *Buchler*, on 24th January, the Court of Appeal (the MASTER OF THE ROLLS, ASQUITH, L.J., and VAISEY, J.) held, allowing an appeal from a decision of WALLINGTON, J., dismissing a husband's petition for divorce for desertion, that the husband's refusal to give up the friendship of a pig-man in his employ did not justify the wife in deserting him.

CRIMINAL LAW AND PRACTICE

RELEVANCE OF EVIDENCE

CONFINING one's examination-in-chief or cross-examination within the limits of relevance is no easy task, especially nowadays when the increased volume of work before the courts tends to make judges and magistrates more exacting and more appreciative of concise advocacy.

In many cases advocates must judge for themselves as to what is relevant, without the aid of any legal rule other than the universal principle that nothing may be given in evidence which does not directly tend to prove or disprove the issue in the case. In the all too common types of private prosecution for common assault, for example, an advocate who insisted on delving into past history of friction between the parties in an endeavour to show indirectly who was the probable aggressor, would draw forth a well-deserved rebuke from the bench. A moment's thought shows that not only is it dangerously near giving evidence of bad character to do so, thus infringing a well-established rule of English law (*Makin* v. *A.-G. for New South Wales* [1894] A.C. 57), but even where that danger is avoided, such evidence does not afford direct or indeed any proof, as the aggressor of yesterday may be the defender of to-day.

The more difficult question of selection occurs in relation to the facts immediately surrounding the incident of the alleged offence. The extent of what is relevant necessarily varies with the nature of the offence alleged. Where malice aforethought is a necessary ingredient, as in murder, the conduct of the accused over a wider period of time may become relevant, while in more trivial offences, which are usually not planned ahead, the field of admissible and relevant evidence must be considerably narrowed. For example, in *R.* v. *Edwards* (1872), 12 Cox C.C. 280, a case of wife murder, a neighbour's evidence was admitted to show that a week before the alleged crime the murdered woman had brought her an axe, and the fact that she asked her to take care of it was also held to be admissible, together with her other statements to the neighbour.

The commonest kind of confusion occurs with regard to the relevancy of remarks, which, though ordinarily excluded as hearsay, are nevertheless brought in as evidence of *res gestæ*, or things which happened at the time of the alleged offence, which throw light on whether or not it was committed (see *R.* v. *Gordon* (1787), 2 Doug. 591).

The rule applicable in the more common crime of wounding and assault was laid down in *Thompson* v. *Trevanion* (1693), Holt K.B. 286, where it was held that what was said by the wounded person immediately upon the hurt being received was admissible in evidence as part of the *res gestæ*. (See also *R.* v. *Foster* (1834), 6 C. & P. 325.) This is a rule which applies to all kinds of crime, including murder (*R.* v. *Morgan* (1875), 14 Cox C.C. 337). The rule, however, is very strictly applied against the prosecution, and in a case in which death supervened only a few minutes after the act of wounding, Cockburn, C.J., ruled that a statement made by the deceased a minute or two after the act of wounding but before the death, was not admissible in evidence on a prosecution for murder, because it was made after the act alleged and not contemporaneously with it (*R.* v. *Bedingfield* (1879), 14 Cox C.C. 341).

What is the law with regard to complaints after the alleged offence has been committed? A rule existed at one time in sexual offences against women that the fact of the complaint and the state in which the prosecutrix was at the time of the complaint were admissible evidence for the prosecution, but not what she said in the complaint (*R.* v. *Clarke* (1817), 2 Stark. 241). If the complaint,

however, occurred very soon after the offence, the prosecutrix might be asked whether she named a person as having committed the alleged offence, but might not be asked whose name she mentioned (*R.* v. *Osborne* (1842), Car. & M. 622). However, in *R.* v. *Lillyman* (1876), 2 Q.B. 167, there was an issue as to consent in a prosecution for rape. There was evidence of a complaint by the victim, a servant girl, to her mistress, shortly after the alleged offence. A court consisting of Lord Russell of Killowen, C.J., Pollock, B., Hawkins, Caves and Mills, JJ., held that the complaint was not admissible as to the facts complained of, but was admissible to show consistency of conduct of the complainant and lack of consent. The court further held that the contents of the complaint were also admissible. As to the argument that to allow particulars of the complaint " would be calculated to prejudice the interests of the accused, and that the jury would be apt to treat the complaint as evidence of the facts complained of," the court held that it was the duty of the judge " to impress upon the jury in every case that they are not entitled to make use of the complaint as any evidence whatever of those facts." Ridley, J., in *R.* v. *Osborne* [1905] 1 K.B. 551, held that *R.* v. *Lillyman* decided that such a complaint in sexual offences was relevant both on the issue of consent and on the question of corroboration. He added that the proper limits within which such evidence should be given are (1) it applies only to sexual offences against women; (2) it applies only where there is a complaint " not solicited by questions of a leading and inducing or intimidating character," and (3) " only when it is made at the first opportunity after the offence which reasonably offers itself." The jury, he said, must be warned that the complaint only goes to consent and corroboration.

It is most important to observe that this rule only applies to sexual offences and does not extend to wounding or assault charges. In *Beatty* v. *Cullingworth* (1896), 60 J.P. 740, Hawkins, J., said with regard to *R.* v. *Lillyman*: " The principle of that decision is only applicable to cases of rape and similar offences against women and girls. It is not of general application."

Here again one encounters that differentiation between sexual and other offences, and even between different types of sexual offences, which marks our English law of evidence. In the recent case of *R.* v. *Sims* (1946), 175 L.T. 12, which I made the subject of an article a few weeks ago, it was held that evidence of previous crimes of perverted lust between males was admissible on a charge of sodomy, because repetition was part of the character of the offence.

In the case, however, of sexual offences against women there is considerably more logical foundation for the rule as to the admissibility of complaints than there is for the rule in *R.* v. *Sims*, *supra*. It is most important that a woman's evidence be corroborated if she alleges that she has been sexually assaulted, and corroboration is expressly required by statute. Consent is also an issue in many such cases. In the case of offences against males, consent is not an issue and is only relevant to the question whether the evidence of the victim of the assault is tainted by reason of the fact that he is an accomplice and therefore should be corroborated.

Greater latitude is allowed in cross-examination than in examination-in-chief. Leading questions may be asked (*Parkin* v. *Moon* (1836), 7 C. & P. 408), and questions irrelevant to the issue may be gone into for the purpose of weakening the examination-in-chief or impeaching the credit of a witness. But if none of these purposes is served by irrelevant cross-examination, it will become inadmissible as well as irrelevant.

In most cases of assault and wounding, cross-examination of a policeman, for example, to suggest that the victim made a complaint after the commission of the offence would be irrelevant. Of course, if the policeman had been allowed to say in chief that no complaint had been made it is arguable that cross-examination to the effect that a complaint had in fact been made would be admissible as cross-examination to credit. The point is quite academic, as probably no policeman would ever be allowed to give such irrelevant evidence-in-chief. The fact remains, and it is as well to bear it in mind, that no evidence as to a complaint of an assault is admissible in chief or in cross-examination.

PREVIOUS CONVICTIONS AND PRESENT SENTENCE

A general rule of law has been laid down more than once by the Court of Criminal Appeal that, in determining what sentence to pass upon a defendant who has been convicted of an offence, regard should be had to the fact that any previous offences were of a different character from that of the case before the court.

In *R.* v. *Parsons* (1912), 7 Cr. App. Rep. 76, a sentence of three years' penal servitude for housebreaking was reduced on appeal to one of eighteen months' imprisonment with hard labour, the only serious previous offence having been one of abduction in 1907. The ground for the reduction of the sentence was stated to be that " the previous offence was not of the same character as the present offence." (See also *R.* v. *Boucher* (1909), 2 Cr. App. Rep. 177, and *R.* v. *Stafford* (1920), 15 Cr. App. Rep. 7.)

Another general rule must be considered in conjunction with this, viz., that " when a man has committed serious offences and has served long terms for them, it is not required that he should suffer further severe punishment for a later offence which does not intrinsically call for it." (*R.* v. *Gumbs* (1926), 19 Cr. App. Rep. 74.)

One other point in connection with this aspect of the relevance of previous convictions to the question of sentence is that the interval since the previous conviction must also be taken into account. In *R.* v. *Bibbings* (1918), 13 Cr. App. Rep. 205, the sentence awarded at quarter sessions for larceny of two basins and marble slabs from a barber's shop was six months with hard labour. Apparently the barber's premises were unoccupied at the time of the theft, and the Court of Criminal Appeal took the view that the fact that the appellant might have thought that nobody was likely to claim the property was some mitigation. The only previous conviction was one for perjury seventeen years before, in swearing an affidavit. The sentence was reduced to one of two months in the second division., (See also *R.* v. *Nuttall* (1908), 73 J.P. 30.)

In a case in the Court of Criminal Appeal reported in *The Times* of 15th January, the court held that offences against the Road Traffic Act, 1930, which might involve disqualification from holding a driving licence or the endorsement of a licence, were not proper cases to be taken into consideration when sentencing a prisoner for another type of offence. The court gave a further reason for following the general rule in this particular class of case. They said that unless there was a conviction there was no power to disqualify or endorse, but unless special circumstances existed, a person convicted of certain offences under the Act must be disqualified or have his licence endorsed. The court's ruling emphasises the difference between these classes of motoring offence and other criminal offences. By " another type of offence " the court must have meant offences other than those under the Road Traffic Act, 1930, and similar Acts dealing with the management of vehicles on the road, and clearly intended that consideration of previous offences relating to such matters was to be entirely excluded in determining the sentence to be awarded for any other type of offence whatsoever.

The offices of the Bankruptcy Department of the Board of Trade have now been removed from Blackpool, and from 27th January, 1947, are situated at 2, Central Buildings, Matthew Parker Street, London, S.W.1.

An address on the New Towns Act, 1946, will be given to members of the Auctioneers' and Estate Agents' Institute on Thursday, 6th February, 1947, at 6 p.m., at 29, Lincoln's Inn Fields, W.C.2, by Mr. Michael E. Rowe, C.B.E., K.C.

COMPANY LAW AND PRACTICE

COMPANIES BILL—VII

MISCELLANEOUS PROVISIONS AS TO SHARES AND DEBENTURES

I HAVE, I think, now dealt with most of the more important provisions of the Bill except those which relate to winding-up; but there are some provisions of a miscellaneous character relating to shares and debentures which I have not yet mentioned, and which it would perhaps be more systematic to discuss before coming to the winding-up provisions. These miscellaneous provisions I will try to summarise in this article, and it may make for easier reading if I do so under sub-headings.

(A) *Allotment of shares.* Clause 48 of the Bill deals with two matters. The first is that (in order presumably to give time for Press comment to be made on the prospectus or expert advice sought) provision is made for a compulsory interval between the issue of a prospectus and the allotment of shares or debentures offered to the public by the prospectus. Allotment is not to be made until the third day after the issue of the prospectus or such later day as the prospectus may specify; an allotment made in contravention of this provision is not, however, to be invalid but will render the company and responsible officers liable to a fine. Secondly, the clause provides that an application for shares or debentures in pursuance of a prospectus cannot be withdrawn until after the expiration of the third day following the issue of the prospectus or, again, such later day as the prospectus specifies for the opening of the subscription lists. This second provision will prevent speculative applications being made by persons who intend to withdraw them before allotment if they think they are not going to be able to sell the shares at a profit; note that it creates a statutory exception to the general rule that an offer can be withdrawn at any time before acceptance. The provisions of cl. 48 do not apply to prospectuses issued to existing members or debenture-holders of the company.

Clause 49 is designed to protect subscribers on the faith of a prospectus which states that application has been or will be made for permission to deal in the shares or debentures offered by the prospectus, in the event of such application being refused. Allotments are to be void if the permission has not been applied for before the third day after the issue of the prospectus or if it is refused before the expiration of three weeks from the date of closing the subscription lists; subscription moneys are to be kept in a separate bank account and to be repaid if permission is not applied for or is refused within the time stipulated. A company which has not commenced to carry on business may not do so so long as there is the possibility of it becoming liable to repay money to subscribers in such cases. The clause also provides for the case where the first allotment to the public comprises more than one class of shares and the allotment of one class is rendered void under the foregoing provisions, with the result that the amount remaining validly subscribed (i.e., for shares of the other class) is less than the minimum subscription: an allottee of shares of the other class may in that case avoid his allotment.

(B) *Redeemable preference shares.* Section 46 of the 1929 Act relating to redeemable preference shares has been found in some respects to give rise to difficulties of interpretation and practice and cl. 63 of the Bill contains provisions which remove some, but not all, of those difficulties. Section 46, it will be recalled, provides that when the shares are redeemed out of profits there must be transferred out of profits to a reserve fund (the capital redemption reserve fund) a sum equal to "the amount applied in redeeming the shares"; the Bill provides that the sum so to be transferred is to be equal to "the nominal amount of the shares redeemed" and that any premium payable on redemption must be provided out of profits. The requirement of s. 46 that every balance sheet is to specify the date on or before which the shares are to be redeemed has never seemed to have much practical significance, as it can readily enough be satisfied by fixing a far-off date which means little or nothing; the Bill alters this to the much more relevant requirement that the earliest date on which the company has power to redeem its shares is to be stated.

The Bill further provides that the redemption of redeemable preference shares is not to be taken as reducing the amount of the company's share capital, and this, I take it, in effect alters the present law that the redeemed shares cease to be part of the company's authorised capital (see *Re Serpell & Co., Ltd.* [1944] Ch. 233). If this is the effect of the provision, then, after redemption, the company's authorised capital will continue to include the redeemed shares; and the existing power to issue shares in place of the redeemed shares will, in substance, be a power to re-issue the redeemed shares. This seems to clear up some of the apparent difficulties which arise in regard to the power given by s. 46 (4) to issue shares in place of the redeemed shares without an increase of capital. On the other hand, it will be remembered that s. 46 (4) authorises the issue of new shares *before* redemption, if the company is about to redeem the preference shares, "as if those shares had never been issued"; and in such a case there still seems to arise the rather illogical position that the new shares may be issued without any increase of capital being made to create them.

(C) *Premiums received on an issue of shares* are, if cl. 64 of the Bill becomes law, to be transferred to a share premium account, the amount of which is to be shown in the balance sheet, and the provisions of the Act relating to reduction of capital are to apply as if this account were paid-up share capital. It will not accordingly be available for the payment of dividends, though the Bill does authorise its application in paying up bonus shares to be issued to the members. The provisions of this clause are retrospective and apply to share premiums already received, with the necessary qualification that premiums already applied by the company or no longer identifiable as such are excepted.

(D) *Provision of financial assistance by a company for the purchase of its shares.* The restrictions contained in s. 45 of the Act on the provision of such assistance are by cl. 65 extended (i) so as to restrict the giving of such assistance by a subsidiary company in relation to the acquisition of shares in its parent company, and (ii) so as to cover the giving of assistance to not only the purchase but also the subscription of shares. This latter extension would alter the law as laid down in *Re V. G. M. Holdings, Ltd.* [1942] Ch. 235.

Though the Bill does not in terms say so, it would appear that the extensions involve a prohibition on a subsidiary company purchasing or subscribing for the shares of its parent company.

(E) *Debentures.* Clause 66 of the Bill gives the public a right to inspect and require copies of the register of debenture-holders kept by the company. Clause 67 limits the effect of the not uncommon clause in debenture trust deeds which absolves the trustees from liability for anything but their own wilful neglect or default (as to the effect of which see *Re City Equitable Fire Insurance Co.* [1925] Ch. 407). Clauses of this kind are to be void so far as they have the effect (*a*) of exempting a trustee from or indemnifying him against liability for breach of trust where he fails to show the required degree of care and diligence, or (*b*) of absolving him, otherwise than by entitling him to rely on the advice and information of others, from the ordinary degree of care and diligence required of a trustee. This provision is not, however, to invalidate releases validly given to a trustee in respect of his acts or omissions or provisions in the trust deed enabling releases to be given, with the consent of three-fourths in value of the debenture-holders, in regard to specific acts or omissions or on the death or retirement of the trustee.

(F) *Receivers and managers.* Part IV of the Bill contains provisions for making available to debenture-holders, creditors

and shareholders information about the financial position of the company at the date of and during the appointment of a receiver. I hardly think it necessary in these columns to discuss the details of these provisions (cll. 74 and 75); to summarise them briefly, a receiver or manager appointed (whether by or out of court) on behalf of debenture-holders whose security comprises a floating charge, is to be furnished by the directors with a statement of affairs, showing particulars of the company's assets, debts and liabilities, and particulars of all its creditors. A copy of this statement is to be sent by the receiver to the Registrar of Companies together with a summary of the statement, and a copy of the summary to the debenture-holders and their trustees (if any). Further, the receiver is to send annually to the Registrar, the company, the debenture-holders and their trustees an abstract of his receipts and payments during the past twelve months. The documents sent to the Registrar will be available for inspection by interested persons.

There are two important provisions of the Bill in regard to receivers or managers appointed out of court (cl. 76). First, they are empowered to apply to the court for directions on any matter arising in connection with the performance of their functions—a provision which, as past experience of the absence of such a power has shown, should prove of the greatest usefulness. Secondly, a receiver or manager appointed out of court is to have the same personal liability as if appointed by the court in respect of contracts entered into by him, and, correspondingly, to have the same right of indemnity. Receivers appointed out of court are, as a rule, the agents of the company and so not personally liable on contracts which they may make; consequently, a person supplying goods on the order of the receiver may only have the right to sue a company which has no assets after the debenture-holders have been satisfied. The new provision which puts the receiver appointed out of court on the same footing in this respect as a receiver appointed by the court will, while improving the position of persons dealing with the receiver, not prejudice the latter, who can indemnify himself out of the assets.

Finally, this part of the Bill (cl. 73) renders it a criminal offence for any person who is an undischarged bankrupt to act as a receiver or manager for debenture-holders (unless appointed by the court). It is curious that such a restriction has not previously existed, especially as undischarged bankrupts are disqualified from acting as directors (s. 142 of the 1929 Act).

A CONVEYANCER'S DIARY

TRUSTEES AND INVESTMENTS

A SUBSCRIBER writes as follows:—

"Might I suggest that it may be of considerable interest to solicitors in general if an article or other comments could appear in your paper on the propriety of trustees investing in such stocks as 3½ per cent. War Loan and 3½ per cent. Conversion Loan, which now stand at a considerable premium and which may well be expected to be redeemed at the earliest possible date? My points may be best illustrated by a trust of which I am a trustee, though my firm does not act for the trustees. My co-trustee is one of the tenants for life, and the trustees are limited to what are commonly called 'trustee securities.' I have taken the point that I am not prepared to purchase securities which stand at a substantial premium, and which may be expected to be redeemed in, say, 1952, as would happen with 3½ per cent. War Loan, thereby in effect subsidising the tenant for life out of capital to the tune of 1½ per cent. per annum. My co-trustee, as I have already said, is one of the tenants for life, both of us having been appointed by the testator in his will. The question is, to what extent a trustee should invest in such investments as 3½ per cent. War Loan when he knows perfectly well that there is a strong probability there will be a loss of probably £7 10s. per cent. to capital during the next five years."

The above appears to me to raise, acutely, the whole question of the principles on which trustees should act in investing or re-investing the trust property. The relevant provisions of the Trustee Act are as follows: subs. (1) of s. 1 sets forth, in paragraphs identified by letters, the well-known list of securities. Space does not allow it to be set out here. Subsection (2) makes a special provision in regard to home railways, which for the present need not detain us. Section 2 of the Act is as follows:—

"(1) A trustee may under the powers of this Act invest in any of the securities mentioned or referred to in section one of this Act, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value.

"Provided that, in the case of any stock mentioned or referred to in paragraphs (*g*), (*i*), (*k*), (*l*), (*m*), (*o*), (*p*) and (*q*) of subsection (1) of section one of this Act, which is liable to be redeemed at par or at some other fixed rate, a trustee shall not be entitled to purchase the stock—(*a*) at a price exceeding 15 per centum above par or such other fixed rate; nor (*b*) if the stock is liable to be so redeemed as aforesaid within 15 years of the date of purchase, at a price exceeding its redemption value.

"(2) A trustee may retain until redemption any redeemable stock, fund, or security which may have been purchased in accordance with the powers of this Act, or any statute replaced by this Act."

The sub-paragraphs of s. 1 (1), to which reference is made in s. 2 (1), are those relating to the prior charges of home railways and Indian railways, the stock of the larger municipal boroughs and counties, colonial government stock, housing bonds, and the securities of the government of Northern Ireland. There is no restriction on the purchase above par of British government stock, real or heritable securities, Indian government stock, securities the interest of which is, for the time being, guaranteed by Parliament, metropolitan stock or the stock of water companies. Also, and this is somewhat remarkable, the restrictions of s. 2 do not apply to the investments mentioned in sub-paragraph (*r*), namely, "stocks, funds or securities for the time being authorised for the investment of cash under the control of the court." It seems almost certain that this omission must be in error, because it would appear to imply that a stock subject to the restrictions under s. 1 (1) of the Act might become free from the restriction merely by being added to the court's list of securities, enacted by R.S.C., Ord. 22, r. 17. Thus, it is well-known that various prior charges of home railways are not qualified as trustee securities under s. 1 (1) (*g*) of the Act, owing to the dividend on the ordinary stocks having fallen below 3 per cent., but the same securities are admissible for investment of money under the control of the court, because the court merely requires that for ten years before the date of investment the railway shall have paid some dividend on its ordinary stock. I must confess I had never previously noticed the anomaly apparently caused by the omission of para. (*r*) from the list of paragraphs set out in s. 2 (1) of the Act, and I should hesitate to encourage trustees to make use of it.

I cannot find any reported decision on the effect of s. 2 (1) of the Trustee Act. In the middle of the nineteenth century it was held that stocks other than British government stocks, which were above par and near to redemption, were improper investments for trust funds because the effect of such an investment might be to benefit the tenant for life at the expense of the remainderman. But, so far as concerns the classes of security expressly mentioned in s. 2 (1) as having been subjected to restrictions upon purchase above par, it is clear that Parliament, in passing the Trustee Act, 1925, intended to make it permissible to purchase them above par within those limits. And, *a fortiori*, those categories prescribed by s. 1 (1), which are not restricted by s. 2 (1), are evidently free from any restriction upon purchase above par.

But it must not be forgotten that even within the categories permissible under ss. 1 and 2 of the Trustee Act, a trustee is not absolutely safe. The law appears to me to be correctly stated in Underhill, 9th ed., p. 309, as follows: "To invest in any other securities would, of itself, be a breach of trust; but, even with regard to those which are permissible, a trustee must take such care as a reasonably cautious man would use, having regard not only to the interests of those who are entitled to the income, but to the interests of those who will take in future. All that the statute does is to shift the onus of proof; so that, instead of the trustee having to prove affirmatively that the investment was prudent, the beneficiary who attacks it has to prove that it was imprudent." Moreover a trustee is certainly not protected in making an otherwise authorised investment from an improper motive. The learned author says in terms, at the bottom of p. 310, that the statute would not protect a trustee "if he were to make (an authorised but hazardous) investment for the purpose of procuring a larger income for the tenant for life."

The other principle which must clearly be borne in mind in considering the question raised by the letter printed above, is that the trustee must, to the best of his ability, hold the scales even. At the present time almost every tenant for life cries out on each change of investment asking the trustees to find means of obtaining for him a better return than 2½ per cent. or 3 per cent. It would not be right to say that this cry must always be resisted. The paramount duty is that the trustee should be fair to the tenant for life and to the remainderman, taking all the circumstances into account. Thus, in one trust with which I am familiar, there was a considerable amount of re-investment ten years ago which benefited the tenants for life (who have been enjoying the income for more than thirty years last past, and who are still receiving a larger income from the trust than they did thirty years ago) and the trustees necessarily find that their duty to be fair leads them, at the present date, to pay very much less attention to the wishes of the tenants for life on this point than they would have paid had the tenants for life been less well served in the past. The trustee must always bear in mind the danger of his position; the tenant for life is known to him and at hand; the remaindermen are sometimes unascertainable and are very seldom in direct and continuous contact with the trustee. Trustees, therefore, obtain a natural bias in favour of the tenant for life which it is not always easy to correct. I am afraid the foregoing exposition of principle looks rather vague, but I have some considerable experience in the running of a large trust, and the real lesson I have learned from it is that one must try to look at the trust as a whole, not only in the sense of looking at the fund as a whole, but looking at the trust period as a whole. By this means one is enabled to surmount particular obstacles somewhat more easily than if one were to approach each such obstacle as if it were an isolated matter to be dealt with by itself.

With regard to purchases above par, I venture to refer again to Underhill, this time at p. 311. The learned author says that although the provisions of s. 2 of the Trustee Act only apply to some of the categories prescribed by s. 1, "the intention of Parliament . . . appears to be to fix a standard of prudence in such cases, viz., that a trustee should not pay more than a premium of 15 per cent. above the redemption price, and that the period of redemption should be at least 15 years distant at the date of investment . . . (Though this standard does not in terms apply to all available securities) . . . *a fortiori*, a trustee who applied the rule to the other permissible securities would be safe." By this test neither the 3½ per cent. War Loan 1952, nor the 3½ per cent. Conversion Loan 1961, which stand on the day of writing respectively at 108¼ and 114½, are securities complying with this standard of prudence. Each is redeemable within fifteen years from the present. No doubt there are cases in which, since the standard of prudence is not absolute, trustees looking at the trust as a whole would be justified in purchasing these securities, but the case put in the letter is, in my opinion, not one of them. The crux of the matter in that case is that my correspondent's co-trustee is himself one of the tenants for life and it is evidently he who desires that these stocks should be purchased. Since the effect of such a transaction would, as my correspondent justly says, be to subsidise the tenant for life out of the capital, I certainly could not advise the independent trustee to accept the proposal of the tenant for life. No doubt it may be said that this conclusion is harsh, since it is the misfortune of the tenant for life to be also one of the trustees. But he need not have accepted the trusteeship and, having done so, he necessarily puts himself in difficulty in urging a point of view beneficial to him in his other capacity. This is only one of the ways in which embarrassments are caused for all concerned by having a tenant for life as one of the trustees, and with the increasing difficulties of investment, it cannot fail to increase in the near future. It is much less if a remainderman is one of the trustees, since his personal position is a much weaker one. In these days I should deprecate an arrangement, if it is possible to avoid it, under which a tenant for life is a trustee without a remainderman to balance him. It is unfair to the tenant for life himself, as the court is likely to take a rigid view of his duties as a trustee, and it is awkward for the independent trustee.

LANDLORD AND TENANT NOTEBOOK

FURNISHED AND UNFURNISHED CONTROL: OVERLAPPING

It is, of course, notorious that the Furnished Houses (Rent Control) Act, 1946, was passed with the object of achieving something which the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, had failed to achieve. But it has not escaped notice that while the two codes differ in scope (e.g., the 1946 Act applies irrespective of amounts of rent or rateable values, and affects lettings under which the "lessee" is entitled to share "vital living accommodation") there are or may be contracts to which both apply.

There have been cases in which at least one Furnished Houses Rent Tribunal has considered itself entitled to reduce the rent of premises which already had a standard rent. In order to appreciate how this may come about, it is useful to bear in mind that while in each case there must be premises and a contract, the 1920–39 Acts contemplate the premises in the first instance, but the 1946 statute lays the emphasis on the contract. Then, in the case of furniture, the former Acts were prevented from applying only by proviso (i) to s. 12 (2) of the Act of 1920, as amended by s. 10 of the Act of 1923, as the result of which, and of the recent decision in *Property Holdings Co., Ltd.* v. *Mischeff* [1946] K.B. 645 (C.A.) (see 90 Sol. J. 485), a not very limited quantity of furniture may be let with a dwelling-house without excluding that dwelling-house from the operation of the Rent, etc., Restrictions Acts, 1920 to 1939. There is, however, nothing to exclude such premises, or at all events the contract of letting, from the operation of the Furnished Houses (Rent Control) Act, 1946, for you have a contract by which one person grants to another the right to occupy as a residence a house in consideration of a rent which includes payment for the use of furniture, and the Act says nothing about the relationship between the value of the furniture and the amount of the rent. If in *Property Holdings Co., Ltd.* v. *Mischeff* the court had taken the view that the statutory provisions which it had to consider merely declared that the judgments in *Wilkes* v. *Goodwin* [1923] 2 K.B. 86 (C.A.) were sound and meant that the *de minimis* maxim applied and that "substantial portion" in s. 10 of the 1923 Act did not mean "substantial proportion" the position might be different. As things are, *prima facie*, a Furnished Rents Tribunal has jurisdiction: I will deal with a possible objection presently.

Another case in which this question of scope may arise is that of a letting with services. For this expression, as is enacted in s. 12 (1) of the Furnished Houses (Rent Control) Act, 1946, includes attendance. It also includes the provision of a number of things which have been held not to be attendance for the purposes of proviso (i) to s. 12 (2) of the Increase of Rent, etc., Restrictions Act, 1920. And as services with which the 1946 Act is concerned may include what is not attendance under that of 1920, again there is, *prima facie*, some overlapping, and it seems possible that a landlord—to approach the question from the other side—can apply to a tribunal to increase rent under s. 2 (4) of the 1946 Act (increased cost of services) though premises are within the 1920 to 1939 Acts and consequently must have a standard rent (see *Austin* v. *Greengrass* [1944] K.B. 399).

This leads to an examination of the nature and function of a standard rent. I think a fair exposition of these can be found in *Phillips* v. *Copping* [1935] 1 K.B. 15 (C.A.). It is pointed out by Scrutton, L.J., that the object of the provisions was to prevent increases in rent beyond pre-war level except as authorised, excess payments being made recoverable, and held that a landlord was accordingly entitled, if he had let at less than the permitted figure, to raise the rent to whatever was permitted.

Suppose, then, that a tribunal is asked to reduce the rent of premises let with insufficient furniture to take them out of the 1920–39 Acts, and to increase that of premises to which the landlord supplies hot water, a service which is not attendance?

As regards the 1946 Act itself, the only objection, as far as I can see, would be one based on s. 7, running: "Sections 9 and 10 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (which relate respectively to limitation on rent of houses let furnished and to penalty for excessive charges for furnished lettings), shall not apply as regards rent charged for any house or part of a house entered in the register under the provisions of this Act in respect of any period subsequent to such registration, but save as aforesaid nothing in this Act shall affect any provisions of the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939."

Does this encourage a tribunal to proceed with the references, or should it deter it from so doing? Or neither? The two sections cited in the body of the provision both deal with "houses to which this Act applies," words which, it has been pointed out, must be read as "houses to which this Act would apply if they were let unfurnished." So s. 7 of the 1946 Act appears to be designed to transfer such properties and lettings to the 1946 Act—but deliberately to prevent any other transfer. And, the two sections do not deal with lettings with attendance.

Suppose, then, that the tribunal purports to reduce rent in the one case, increase it in the other. The landlord in the one case would, I think, apart from the question of consequences sounding in criminal law, be in some difficulty if he sought to recover the old rent in the face of the prohibition contained in s. 4 of the 1946 Act, for I submit that the answer to the problem is that the permitted figure *has* been reduced, and *Phillips* v. *Copping* could not avail the lessor. But the landlord whose tenant objected to paying more for services would also be in a difficulty, for there is nothing to make an approved and registered increase recoverable, and the concluding words of s. 7 seem almost calculated to protect him in this case.

The transfer, as I have called it, effected by the main part of that section may afford some answer, in apt circumstances, to a problem recently propounded by the chairman of a London tribunal. According to a short report in *The Times* of 8th January, he said: "We have had repeated inquiries from tenants regarding the repayment of back money. This case [the rent of a furnished room had been reduced from 24s. to 12s. a week] is one which draws attention to the need for an alteration of the law," etc. Now the case may well have been one in which, by reason of the sharing of a kitchen or other accommodation, s. 9 of the Act of 1920 would never have applied; but if it did apply, it should be noted that the transfer takes effect from the registration, and does not operate before then. Consequently, one of the practical difficulties facing tenants who sought to avail themselves of s. 9 of the 1920 Act has in fact been removed: I refer to that of discharging the burden of proof that the rent charged yielded a profit more than 25 per cent. in excess of the "normal profit" (old control) or at all in excess of such profit (new control). For while the difficulty of proving what profit was normal on 3rd August, 1914, or 1st September, 1939, remains, the tenant can at least, without recourse to interrogatories, adduce evidence in the shape of the lessor's statement under s. 2 of the 1946 Act, and possibly further information divulged in the course of a hearing, showing what profit was made. So that if the premises were within the 1920–39 Acts, he could recover "back money," subject only to the limitations to be found in s. 8 (2) of the Act of 1923 and s. 7 (6) of that of 1938.

TO-DAY AND YESTERDAY

January 27.—On 27th January, 1670, the Gray's Inn Benchers referred the petitions by the gentlemen who desired to be called to the Bar to a committee of three. Two Benchers were assigned Readers' chambers, "saving the claim of such of the Readers as are ancienter Readers" to choose those chambers.

January 28.—On 28th January, 1676, the Gray's Inn Benchers ordered that no member should be called to the Bar till he had been admitted to a chamber and also that if any member should come into Hall to eat before he had paid his commons the Steward should report him so that proceedings might be taken against him. It was also ordered "that the several gentlemen who keep women in their chambers" should show cause why their chambers should not be seized.

January 29.—The Restoration of the monarchy failed to revive the old system of legal education in the Inns of Court suspended by the Civil War. In Gray's Inn the last Reading was held in 1677, but the idea still lingered on and on 29th January, 1686, nineteen members were called on "to accept their call to the Bench in order to read in their turns." Twenty-seven members were also called to be Ancients, but this, too, was a dying institution and no more were called after 1709.

January 30.—In 1755–56 Gray's Inn was transforming its garden, planting lawns and generally altering the character which Bacon had given it. In July, 1755, Bacon's Mount was ordered to be cleared away. On 30th January, 1756, it was ordered that "the sycamore tree and the lower elm at the foot of the west slope in the Walks and the building on the west side of the Great Walk are to be taken down and search to be made whether there be any spring under the building." This building was perhaps Bacon's summer-house on the mount.

January 31.—On 31st January, 1760, the Gray's Inn Benchers ordered "Mr. Pickering's law lectures to be continued on the old conditions." These were almost the sole public manifestations of legal education in the eighteenth century. Danby Pickering was a barrister of the Society. He lectured from 1753 to 1769, when he became a Bencher. On the same date it was ordered that Macdowall's Universal History, Hurd's Dialogues and Postlethwayte's Dictionary should be bought. A "machine fire stove" was also ordered to be put up in one of the chambers to prevent the chimney from smoking.

February 1.—On 1st February, 1782, Gray's Inn appointed John Dignam cook. "The salary of the office to be in future £50 a year and a house, without any board, wages or perquisites and he is not to let the house." A committee was appointed to report on alterations required in the kitchen.

February 2.—On Candlemas night, 2nd February, 1683, there was a masque in Gray's Inn Hall, the culmination of that year's Christmas revels. Sir Richard Gipps was in charge of the proceedings, having been called to the Bar of grace the previous November on his promising to undertake the office of Master of the Revels. Later in the month Charles II, evidently pleased with his performance, knighted him. Late in January, attended by his comptrollers and revellers, Gipps drove in state to Whitehall to invite the King and Queen, the Duke and Duchess

of York and the rest of the Court to the Candlemas masque. The entertainment was followed by a splendid banquet.

THE BELLS

At the assizes at Bedford recently Mr. Justice Cassels found himself repeatedly disturbed by the carillon from St. Paul's Church, close by the court. Just before three o'clock it played "Auld Lang Syne" somewhat haltingly, stopped, recovered confidence and then went on with "Through the night of doubt and sorrow." The judge observed that it might be "very nice in the cool of a summer evening but not when one is listening to evidence," and inquired whether the working was mechanical or human. It turned out that the drum mechanism had gone wrong, playing more tunes than it ought, and the verger switched it off. "Now," said the judge, turning to the witness, "where were we before this tintinnabulation began?" Before the disasters of war the wedding peals from St. Clement Danes used often to provide an ironic background of sound to the hearing of divorce cases in the High Court of Justice. No judge, however, I believe, ever yielded to the temptation to repeat the sad pun of Mr. Baron Pollock, who, finding himself interrupted by a ringing of church bells, observed: "I was not aware that this was a court of a peal." That was much on the same level as the suggestion by counsel, when noises of workmen doing repairs somewhere in the building disturbed one of the judges at the Four Courts in Dublin, that it was "only somebody filing affidavits in the next court." The external interruptions to which courts may be subject are many and various. Mr. Justice Eve, sitting in the Chancery Division, was once startled to find his attention being distracted by the playing of a piano in the immediate vicinity. Investigations revealed that Mr. Justice Luxmoore was then enjoying the unusual entertainment of hearing a piano performance in his court by a famous conductor. This was designed to assist him in deciding an action arising out of alleged similarities between an air in a new musical comedy and one of the leading themes in "Madame Butterfly." As for other types of interruption, one recalls the water mill at Cork which an Irish judge stopped during the assizes, on account of the noise, but forgot to give the miller leave to restart it, so that it stood idle for a very long time. In South Africa there was the cock whose persistent crowing annoyed the judge on circuit at Lydenburg, so that he ordered the sheriff to bring it before the court, sentenced it to death for contempt and appointed a policeman to act as executioner and wring its neck.

TREATMENT OF THE SCRIPTURES

At Old Street Police Court recently a man, entering the witness box to make an application, said that the Bible was an anachronism and that it was wrong to take an oath on it. His application was refused and he immediately picked up the Bible and tore it in half. This makes a variation on the treatment which the Scriptures have from time to time received at the hands of witnesses. Sometimes it has been used to emphasise a point, sometimes to illustrate the position of a vehicle or a building, and judges have before now restrained those who have handled it so. As for the casual attitude which the English are apt to display towards their sacred writings, there was a curious illustration to be found in an incident in the career of Mr. Stafford Northcote, who became Lord Iddesleigh. When he became a magistrate for the County of Devon he went to Exeter Castle to be sworn and was handed a volume of "under-done pie-crust colour" tied with faded red tape. Filled with a curiosity, evidently unusual in those parts, he cut the tape and discovered that for about thirty years the magistrates had been sworn on a ready-reckoner. More punctilious was the spirit of the Judge Advocate at a court martial at which Lieutenant-General Sir Edward Bethune, called as a witness, took the book in his left hand. He was sternly bidden to take it in his right, whereupon he held out a right arm ending in a hook saying: "It has pleased Almighty God to deprive me of it."

COUNTY COURT LETTER

Sharing a House

IN *Kennedy* v. *Horrocks* at Willesden County Court, the claim was for possession of a dwelling-house. The plaintiff's case was that in 1944 the whole house was let furnished to the defendant, who asked permission to bring a few items of furniture. The plaintiff agreed, but to her surprise the defendant brought so much furniture that some of the plaintiff's furniture had to be stored in the box-room. In June or July, 1945, the defendant surrendered two rooms to the plaintiff, and the parties shared the kitchen. The rent was reduced from £10 to £5 per month. Owing to friction between herself and the defendant's wife, the plaintiff left at the end of one week. At the time of the new arrangement the value of the plaintiff's furniture, in the part of the house occupied by the defendant, was £30, plus items in the kitchen worth £6 and an old gas stove in a shed. The defendant's case was that he was a statutory tenant. His Honour Deputy Judge Gratton Doyle held that the original contract had been rescinded, and the new arrangement constituted an unfurnished letting. The sharing of the kitchen was distinguishable from *Neale* v. *del Soto* [1945] K.B. 144 on the following grounds: (1) the kitchen was wholly demised to the defendant prior to the new arrangement; (2) apart from one week he had exclusive possession of the kitchen, although he still only paid the reduced rent after the plaintiff left; (3) the kitchen was furnished with items worth £6 of which the defendant was sole bailee; (4) in *Neale* v. *del Soto* the tenant had no estate in the kitchen, which remained in the possession of the landlord; in the present case the position was reversed, as the tenant remained in possession of the kitchen, and the landlord only had a licence to use it. On the question of greater hardship, the evidence supported the defendant's case. Judgment was accordingly given for the defendant, with costs.

The Sale of Horses

IN *Stratton* v. *Saunders*, at Trowbridge County Court, the claim was for £50 as the price of a three-year-old unbroken bay filly. The counter-claim was for £37 in respect of veterinary fees and keep. The plaintiff was a horse-breeder, and his case was that in August, 1944, the defendant visited his farm and bought two unbroken three-year-olds, viz., a bay filly and a chestnut mare, at the price of £50 each. The defendant's cheque arrived on the 29th August, on which day the bay hurt her foot on a sharp stone, and never recovered. The animal, however, was then the property of the defendant. The plaintiff offered to bear half the loss, say £20, but the defendant would not agree. A third horse, a liver-coloured chestnut, was subsequently supplied to the defendant at her request, but this was in addition to, and not in substitution for, the bay filly. The bay was delivered on the 7th September, but had never been paid for. The defendant was the proprietress of a hunting and riding establishment, and her case was that, on hearing by telephone of the accident to the bay, she asked for the liver-coloured chestnut to be sent in its place. This was agreed, and the defendant sent her cheque for £100, thinking the deal was closed. She was surprised to find she was expected to pay for three horses, as the bay had to be destroyed. His Honour Judge Kirkhouse Jenkins, K.C., observed that no warranty was given by the plaintiff and none was alleged. On the agreement being made, the horses passed there and then from the seller to the buyer, and no terms were made about safe delivery. The plaintiff had generously offered to share the loss, although there was no reason why he should sacrifice part of the purchase price. The third horse was supplied in addition to, and not in substitution for, the bay filly. Judgment was given for the plaintiff, on the claim and counter-action, with costs.

Water Supply to Farm

IN *Edwards* v. *Holden's Executors*, at Ludlow County Court, the claim was for £82 10s. as the cost of replacing water pipes removed from New Buildings Farm. The plaintiff's case was that he bought the farm in October, 1943, and then discovered that the water supply to the house had been cut off. There was a spring on the farm, and his predecessor in title (a Mr. Davies) had agreed in 1942 to supply the house of a neighbour (Mr. Holden) with water. It was agreed also that Mr. Holden should lay a branch pipe to the house of Mr. Davies, and this was done. Subsequently (in 1943) Mr. Holden asked permission to extend the supply of water to some cottages, but Mr. Davies refused to agree. He also withdrew the permission for water to be taken from his spring to the house of Mr. Holden, who later removed all the pipes, including the branch pipe to the house of New Buildings Farm, which had become the property of the plaintiff. The defendants were unable to call any evidence, as Mr. Holden had died in August, 1945. It was submitted on their behalf that, on the withdrawal of the permission to take water, Mr. Holden was bound by law to remove the pipes. His Honour Judge Samuel, K.C., held that it was not the intention that the pipes should become part of the field of Mr. Davies. On the revocation of the licence to take the water, the late Mr. Holden was entitled to remove the pipes. Judgment was given for the defendants, with costs.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88–90, Chancery Lane, W.C.2, and contain the name and address of the subscriber and a stamped addressed envelope.

Trust to establish a prize for the apprentices of a company —WHETHER OR NOT CHARITABLE

Q. A retiring managing director of a company wishes that a presentation to him of a sum of money by the employees should be invested to provide an income which will be used annually to purchase prizes to be awarded to the apprentices serving their time in his company who are adjudged to be the most deserving. He desires a trust fund created and a committee set up to choose the apprentice with the most meritorious annual performance and to apply the income for the year to the purchase of a gift—to be chosen by the one selected. Would a gift of this nature be regarded as a charitable gift, or is it essentially private? If no valid charitable trust can be created, am I right in assuming that the only effective way of carrying out the intention is to provide for the certain endurance of the project no longer than the termination of the perpetuity period, at which point a reconstruction of the project will become imperative?

A. It is difficult to say with any certainty whether the proposed trust would be " charitable " or not, but we are disposed to think that, notwithstanding its rather limited scope (confined to the apprentices of but one company), it is " charitable." If it is not " charitable," then we agree that it can only be established for the perpetuity period. A long period might be taken (e.g., the period from the present to twenty-one years after the date of the death of the longest liver of the now living descendants of King Edward VII). A gift over at the end of the period would be necessary.

Undivided shares—TRANSITIONAL PROVISIONS

Q. By conveyance dated 1st March, 1890, property was conveyed to A and B (brothers) as tenants in common in equal shares. A died in January, 1915. His executor purported to convey A's undivided moiety for valuable consideration to a stranger by deed dated 22nd February, 1915. The property consisted of two cottages in the respective occupations of the two brothers, and the effect of the deed of 22nd February, 1915, was to convey one of the cottages. B, the other brother, died in 1946, and by his will (a home-made one) he directed his executors to convey *his* cottage to his son. Was the deed of 22nd February, 1915, effective to pass the legal estate, or is the entirety now vested in the respective personal representatives of A and B?

A. For the purposes of this reply it is assumed (as we gather was the case) that A's executors sold an undivided moiety in the one cottage only to a purchaser (hereinafter called X). If that is so, then on 1st January, 1926, the legal estate in the cottage in which X was interested vested in X and B upon the statutory trusts (Law of Property Act, 1925, Sched. I, Pt. IV, para. 1 (2)), while the legal estate in the other cottage would vest in the Public Trustee if B and A's executors were then still interested (Law of Property Act, 1925, Sched. I, Pt. IV, para. 1 (4)), and in B and the devisee under A's will (if there was an absolute devisee whose devise had been assented to before 1926) nnder the Law of Property Act, 1925, Sched I, Pt. IV, para. 1 (2). In each case the statutory trusts arose.

Apportionment of Rent

Q. T, for whom the writer acts, was the owner of a cottage garden and about 4 acres of arable land, let at an entire rent of £30 per annum. T sold the 4 acres to the local borough council in March for housing purposes, and at completion the writer, with the consent of T, agreed that the rent should be apportioned, the borough council to charge the tenant 4s. a week for the 4 acres and T to charge 8s. for the cottage and garden. The tenant has quitted the house and garden, and T has re-let it at £1 a week. The new tenant has consulted the town clerk, who has advised that under the Rent Restrictions Acts, T can only charge 8s., and the overpaid rent must be returned. I have informed the town clerk that I only agreed to the apportionment as a necessary aid to completion, and did not intend to bind T in future. Please state if, in your opinion, the contention of the town clerk is correct. In his requisitions on title he stated that the purchasers reserved the right to have the rent apportioned under the Landlord and Tenant Act, 1927, s. 20.

A. The premises were not within the Rent and Mortgage Interest Restrictions Act, 1939, prior to the sale; see s. 3 (3) thereof. The town clerk's contention is incorrect. The standard rent of the house and garden is £1 a week.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

Compulsory Membership of The Law Society

Sir,—It is noted that The Law Society proposes during 1947 to take a poll of practising solicitors throughout the country to ascertain their views as to whether membership of The Law Society should be compulsory or voluntary. This, it is submitted, is a weighty problem and should receive the careful consideration of every member of the profession.

In common with most other solicitors, I became a member of The Law Society as soon as I was admitted, and I strongly recommend every solicitor who is not, to become a member. The useful work which The Law Society performs for the profession cannot be denied and it is gratifying to note that, I believe for the first time on record, The Law Society has now thrown aside its reticence and given us some small indication of its activities.

As voluntary members we are doubtless proud of our association with The Law Society and I, for one, should loathe to feel that I had become a " compulsory member by Act of Parliament." In these days of controls and compulsion, I hope that we may be spared this freedom.

Might I suggest that the following methods of getting more members might be considered. (1) That every member should endeavour to persuade a non-member to join. (2) That The Law Society should circularise all non-members and tell them what it has done, and is doing, for the profession as a whole, and the reasons why they should join the Society. (3) That every member should be allowed to use after his name letters indicating that he is a Fellow or Member of the Society, i.e., " F.L.S." or " M.L.S." If this were adopted many non-members would inevitably wish to share in this honour or be prepared to face their clients as to the reason why they are not members. (4) The social side of the profession should be fostered. At present it is almost non-existent. Special lunches and dinners should be held to which prominent public men (especially legal gentlemen) should be invited to speak. Lectures should be held in the evening for members; visits to places of interest and other social events could be arranged. In fact, I would suggest that The Law Society's premises should, as far as possible, be used more in the evenings on the lines of a club with indoor amusements and recreation. When once the social and co-operative spirit is aroused it is thought that new members will be anxious to join. As a more practical suggestion The Law Society should sponsor the formation of a Lawyers' Residential Club—with separate premises in the West End of London—as a centre for lawyers to meet and a place where the provincial solicitor coming to London can stay with his wife and family, meet his clients and feel that this was his " temporary home." This Lawyers' Club should be confined to members of The Law Society only. After all, other professions and classes of people have their own clubs, so why not lawyers?

H. C. HARDCASTLE SANDERS.

Bishopsgate, E.C.2.

REVIEW

How English Law Works. By W. T. WELLS, M.P. 1947. London: Sampson Low, Marston & Co., Ltd. 3s. 6d. net.

This is the first of a new series " Living in Britain," under the general editorship of Mr. Derek Walker-Smith, M.P. No title could be more appropriate for the first book in such a series, for it recognises the truth that law is the foundation of life. This book is written in a crisp and witty style which should appeal to both layman and lawyer. Titles like " Why law isn't all in a book," " What the soldier said," " The rules of the game," and especially " What is wrong with the Law," show the subtlety of the teacher who succeeds in giving difficult instruction in what seems to be plain and blunt language. The chapter on solicitors gives the best picture of a solicitor's life and work that we have seen for a long time. Of the many good things in the book, mention should be made of at least two; the section on barristers' clerks is frank and substantially true; the section on magistrates and their clerks compresses and yet comprehends all the necessary information, with illuminating touches indicating the different points of view, e.g., " others would say that the amateur magistracy, perpetuating the traditions of Justice Shallow, is unadapted to the complex needs of the twentieth century." It is a pleasure both to read this bright little work and to recommend it to our readers.

NOTES OF CASES

COURT OF APPEAL

Maley *v.* Fearn

Morton, Somervell and Asquith, L.JJ.

23rd October, 1946

Landlord and tenant—Rent restriction—Unlawful sub-letting—Breach not giving rise to right of re-entry—"Lawfully sub-let"—Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (10 & 11 Geo. 5, *c.* 17), *s.* 15 (3).

Appeal from a decision of St. Helen's and Widnes County Court.

The plaintiff was the landlord of a house at Widnes of which a Mrs. Bedggood was tenant. The rentbook in which the tenant's payments of rent were recorded as from 23rd April, 1945, contained the following rule, among others: "the tenant must not sub-let or let apartments without the written consent of the owner or agent." The rentbook only came into use some years after the beginning of Mrs. Bedggood's tenancy, but the Court of Appeal upheld the county court judge's finding that it was a condition of the tenancy that there should be no sub-letting without the landlord's consent. The court also took the view that the term in question constituted a condition of the tenancy and that its breach accordingly gave rise to a right of re-entry in the landlord. In 1943, the defendant took a room in the house from the tenant at 6s. a week, but the landlord's agent refused to accept the sub-tenant and his wife as tenants. When he heard that the tenant, Mrs. Bedggood, had died, the landlord brought an action against the sub-tenant for possession. The county court judge held that the sub-tenant had not satisfied him that he was a "lawful sub-tenant," and made an order for possession. The sub-tenant now appealed. By s. 15 (3) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920: "Where the interest of a tenant of a dwelling-house to which this Act applies is determined, either as the result of an order or judgment for possession or ejectment, or for any other reason, any sub-tenant to whom the premises or any part thereof have been lawfully sub-let shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued."

MORTON, L.J., said that, in his opinion, as the sub-letting to the sub-tenant of the one apartment was in breach of a condition of the letting to the tenant, he could not be said to be a person to whom the premises had been "lawfully sub-let" within the meaning of s. 15 (3) of the Act of 1920. His lordship found that there had in fact been no waiver of the breach, and said that the appeal should be dismissed.

SOMERVELL, L.J., agreeing, said that it had been argued for the sub-tenant, he thought rightly, that a stipulation (to use a neutral term) against sub-letting did not necessarily give a right of re-entry. His lordship referred to "Woodfall on Landlord and Tenant," 24th ed., at p. 911. There being evidence on which the county court judge could find that the stipulation in question was a condition, its breach, of course, gave a right of re-entry. In *Norman* v. *Simpson* [1946] 1 K.B. 158; 90 SOL. J. 91, there had originally been a sub-letting without consent, the lease providing that there should be no sub-letting without the consent of the landlord. Subsequently the landlord accepted rent from the tenant with knowledge of the sub-lease, and the court held that, in those circumstances, at the material date (which was held to be the time immediately before the head tenancy came to an end) the lessee was not an unlawful tenant within the meaning of s. 15 (3). Therefore, the position when the sub-lease was originally made without the consent of the landlord did not arise for decision. Morton, L.J., in his judgment ([1946] 1 K.B., at p. 162), discussing the question as at that stage (i.e., before the landlord had waived the breach by accepting rent) restricted the category of unlawful tenant to those whose sub-letting gave a right of re-entry. No argument had been addressed to the court there as to the stipulations which gave rise to a right of re-entry for one reason or another and those which did not. The covenant against sub-letting in that case appeared to be, to all material extent, in the same terms as the covenant referred to in "Woodfall's Landlord and Tenant" (24th ed., at p. 230), as one which did not constitute a condition. There being, apparently, no express provision for re-entry, that covenant would not itself have afforded a right of re-entry. He (Somervell, L.J.) thought that it would be wrong to take Morton, L.J., as deciding in *Norman* v. *Simpson, supra*, that a sub-tenancy was not unlawful within the meaning of s. 15 (3) when it came into existence in consequence of the breach of a covenant which did not give a right of re-entry.

ASQUITH, L.J., agreed.

MORTON, L.J., agreeing with Somervell L.J.'s comments on his judgment in *Norman* v. *Simpson, supra*, said that in the passage quoted, which was *obiter*, the definition of an unlawful sub-letting was in too narrow terms. He thought (although, again, what he said was *obiter*) that, if a sub-letting were contrary to the terms of the tenancy, it might well be an unlawful sub-letting even though it did not give rise to a right of re-entry. The observations in question in *Norman* v. *Simpson, supra*, were *obiter*, because the decision had turned on the fact that there had subsequently been an acceptance of rent with full knowledge of the sub-letting. That being so, immediately before the interest of the head tenant was determined, the sub-tenant was a person lawfully in possession.

COUNSEL: *John Foster*; *Mallison*.

SOLICITORS: *Gregory, Rowcliffe & Co.*, for *Linaker & Linaker*, Runcorn; *Neil Maclean & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Sophian *v.* A. J. Clifford & Son

Scott, Bucknill and Somervell, L.JJ.

14th November, 1946

Bankruptcy—Judgment debt—Bankruptcy notice not complied with by debtor—Subsequent application to court for payment by instalments—Creditor not notified—Right to rescission of instalment order.

Appeal from a decision of Deputy Judge Monier-Williams, given at Bloomsbury County Court.

On 5th March, 1945, judgment was entered for the appellant against the respondents for £134. By January, 1946, they had paid only £8 of that sum. On 31st January, 1946, a bankruptcy notice was served in respect of the balance. The judgment debtors committed an act of bankruptcy by failing to comply with the notice, but on 8th February took out a summons in the county court, returnable on the 19th, asking for an order that the debt should be payable by instalments. The county court judge adjourned the application for a month to enable the creditor to file a petition in bankruptcy. The creditor did not do so within the month, and on 21st March the debtors applied again for an instalment order, neither they nor the court notifying the creditor. The judge made an order for payment by instalments of £8 a month. On 2nd May the creditor filed a petition in bankruptcy, whereupon he learnt of the instalment order. The registrar in bankruptcy adjourned the petition in view of the instalment order. The creditor applied to the county court judge to set it aside. The judge refused, and the creditor now appealed.

SCOTT, L.J., said that, in his view, the judge, having made the original order for payment of the debt by a lump sum, became bound thereafter not to make any order, under the powers conferred by the County Court Rules, for payment by instalments without notifying the creditor, or, if he appeared, without hearing him in opposition. Order XXIV, r. 19, of those rules, clearly gave the judge ample power to revise the instalment order which he had made in respect of this very substantial debt, but for some reason he had refused to make any alteration in it. He ought never, without hearing both sides, to have made the original reduction from a lump sum immediately payable into a series of small instalments payable over a period. He ought to have preserved for the creditor the right which he had by law to proceed by bankruptcy petition. When the creditor applied for rescission of that instalment order, he was, in his (his lordship's) opinion, entitled to it *ex debito justitiæ*, having regard to the mistake which had been made by the court. The right to proceed for payment by instalments in the county court was very valuable, but where, on a judgment debt for a substantial amount, a bankruptcy notice had been served on the debtor with a resulting act of bankruptcy, and the creditor proposed to file a petition in bankruptcy, the latter was entitled to exercise the right which the law provided. There were no grounds in either justice or discretion for the instalment order, and it must be set aside, leaving the judgment standing and the bankruptcy notice effective.

BUCKNILL and SOMERVELL, L.JJ., gave judgment agreeing.

COUNSEL: *T. H. Tilling*. The debtors did not appear and were not represented.

SOLICITOR: *Godfrey A. Elkin*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

***In re* Kinseth**

Vaisey, J. 20th December, 1946

Maintenance—Jurisdiction of magistrates to order maintenance to be paid for benefit of infants—Wife seeks maintenance for herself under one Act and for her child under another—Summary Jurisdiction—(Married Women) Act, 1895 (58 & 59 *Vict. c.* 39), *s.* 5—*Married Women (Maintenance) Act*, 1920 (10 & 11 *Geo.* 5,

c. 63), *s.* 1—*Guardianship of Infants Act*, 1925 (15 & 16 *Geo* 5, *c.* 45) *s.* 7.

Appeal from the magistrates.

The Summary Jurisdiction (Married Women) Act, 1895, by s. 5, authorises a court of summary jurisdiction to direct a husband to pay to a wife seeking relief a sum not exceeding £2 a week. That Act, while enabling the court to give the legal custody of the children of the marriage to the mother, made no specific provision for payment to her by her husband of money for their maintenance. The Married Women (Maintenance) Act, 1920 authorised the court to order a husband to pay a weekly sum not exceeding **ten shillings** a week for the maintenance of each child until such child attains the age of sixteen years. The Guardianship of Infants Act, 1925, by s. 7, authorises a court of summary jurisdiction to award a sum to be paid to a mother for the maintenance of her infant child not exceeding **twenty shillings** a week.

The applicant, having been deserted by her husband, applied to the magistrates under the Summary Jurisdiction (Married Women) Act, 1895, and was awarded £2 a week. She refrained from asking for any order for the custody of the infant child under that Act, and an order for her maintenance under the 1920 Act, as she could only be awarded **ten shillings** a week, but she also applied under the Guardianship of Infants Act, 1925, for her custody and for £1 a week for the child's maintenance. The magistrates held that they had no jurisdiction to make any order under the 1925 Act, as the mother had applied under the 1895 Act. It was not open to an applicant to use both Acts. The wife appealed.

VAISEY, J., said that the magistrates had taken a wrong view. He could not see the slightest reason for supposing that these Acts in the statute book were not available to be used by those who had occasion to use them. He had been told that the practice was not to allow summonses under both Acts to be taken out. He saw no ground why women who had been deserted by their husbands were not entitled to have the benefit of both these Acts, and the practice that they might not proceed under more than one Act was, in his judgment, misconceived. He would allow the appeal.

COUNSEL for the appellant: *H. B. Grant.* The respondent did not appear.

SOLICITOR: *Peter Stainsby.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION

Thomson *v.* Knights

Lord Goddard, C.J., Humphreys and Lewis, JJ.

17th December, 1946

Road traffic—Person in charge of motor vehicle while under influence of drink or drug—Single offence—Road Traffic Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 15.

Case stated by the appeals committee of Essex Quarter Sessions.

The appellant was convicted by a court of summary jurisdiction on an information preferred by the respondent, a superintendent of police, charging him with being unlawfully in charge of a motor vehicle on a public highway while under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle, contrary to s. 15 of the Road Traffic Act, 1930, and sentenced to three months' imprisonment, ordered to pay ten guineas costs, and disqualified for two years for obtaining a driving licence. On the appeal to quarter sessions the sole point taken for the appellant was that the conviction was bad for duplicity in that it was for two separate offences, namely, being in charge of the motor car while under the influence of drink and being in charge of it while under the influence of a drug. Quarter sessions rejected that contention, and the present appeal was against their decision upholding the conviction.

LORD GODDARD, C.J., said that the sole point taken for the appellant was that, as the conviction stated that he was unlawfully in charge of the vehicle while under the influence of drink or a drug, it was bad for duplicity, because, it was contended, being in charge under the influence of drink was one offence and being in charge under the influence of a drug was another. In his opinion, that was not sound, and one offence only was created by those words. Section 15, in his opinion, created three offences, not six. The offences were: driving a motor vehicle while under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle; attempting to drive in those circumstances; or being in charge of a motor vehicle in those circumstances. The words "under the influence of drink or a drug" were merely adjectival. The offences were driving or attempting to drive, or being in charge of, a vehicle when incapable of having proper control of it, and when that incapacity was caused by drink or a drug. Parliament had meant to provide that a man driving, attempting to drive, or in charge of, a car while in a state of self-induced incapacity, whether due to drink or to a drug, in each of those cases, had committed an offence. The appellant was rightly convicted of the offence of being in charge of the car while in this particular state of incapacity.

HUMPHREYS, J., agreeing, said that the cases were admirably summed up and explained in the judgment of Lord Coleridge in *R.* v. *Jones, ex parte Thomas* [1921] 1 K.B. 632, where he pointed out that in the case before him of a person charged under the Act of 1903 with driving recklessly and at a speed dangerous to the public, having regard to the circumstances of the case, the real offence was driving in a manner dangerous to the public by reason of one or other of two things, and that a conviction in which the defendant was convicted of those supposed two offences was really a conviction for one single act. That reasoning applied to the present case. It was one offence of which the appellant had been convicted, not two.

LEWIS, J., agreed.

COUNSEL: *Curtis Bennett*, K.C., and *G. L. Hardy*; *Alban Gordon.*

SOLICITORS: *Alwyn Williams & Co.*; *Sharpe, Pritchard & Co.*, for *Arthur Morgan*, Chelmsford.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

John T. Ellis, Ltd. *v.* Hinds

Lord Goddard, C.J., Humphreys and Lewis, JJ.

22nd January, 1947

Road traffic—Insurance—Youth not qualified for driving licence—Employer's omission to make inquiry—Road Traffic Act, 1930 (20 & 21 *Geo.* 5, *c.* 43), *s.* 35 (1).

Case stated by Amounderness, Blackburn and Leyland Quarter Sessions.

An information was preferred charging the appellant company with having, on 18th June, 1943, permitted a youth called McDonald, under seventeen years of age, to use a motor vehicle when there was not in force in relation to his user of the vehicle an insurance policy complying with Pt. II of the Road Traffic Act, 1930, contrary to s. 35 (1) of the Act. The justices convicted the company and fined them £1. The company appealed to quarter sessions. At the hearing of the appeal the following facts were established: On 18th June, 1943, a motor vehicle owned by the company and driven by McDonald collided with a motor omnibus. The company's vehicle was currently insured. McDonald did not hold and had never held a driving licence, and, by reason of his age, was not qualified to obtain one. The company had no express knowledge of those facts, McDonald having told them that he held a licence and had already driven for other firms, one of which he named. Quarter sessions found that, as a request to McDonald to produce his licence and an investigation of his statement would have revealed the fact he did not hold a licence, the company "recklessly omitted to make those inquiries," and they held (1) that McDonald was not himself entitled to be treated as insured under the policy; (2) that if at the material time the company were within the cover of the policy they would have committed no offence notwithstanding holding (1) above: (3) that the company must be taken to know what a request to McDonald to produce a licence and an investigation of his statement would have revealed; and (4) that by reason of that knowledge they were not within the cover of the policy in respect of the present case, so that there was not in force in relation to the circumstances in question a policy complying with Pt. II of the Act of 1930. They accordingly dismissed the appeal and the company now appealed to the Divisional Court. (*Cur. adv. vult.*)

LORD GODDARD, C.J., in a written judgment with which LEWIS, J., agreed, said that quarter sessions were right on points (1) and (2), and the question was whether the company were protected by their policy at the material time. There was no obligation on them to have a policy in force protecting also the driver, for, at the time, they were driving a vehicle by their own servant, and their liability for his acts was covered by the policy. Adequate protection was therefore given to the public. Whether the company were prevented from relying on the policy because, as quarter sessions found, they had recklessly failed to make the inquiries referred to, depended on the terms of the policy. If the insurers would have been entitled to refuse to indemnify the company, the offence was committed; if not, no offence had been committed. By the relevant exception clause in the policy the insurers were exempted from liability while the vehicle was being driven with the general consent of the insured by any person who to his knowledge did not hold a licence to drive the

vehicle, unless that person had held and was not disqualified for holding or obtaining a licence. Quarter sessions, in holding that the company recklessly omitted to make inquiries, must be taken to mean no more than that they had been extremely careless in not making the inquiries, for they had held that the company had no express knowledge. If a man deliberately shut his eyes to the obvious, he had as much knowledge as if he had been expressly told the fact to which he had shut his eyes. It was, however, quite another thing to say that, because a man had means of knowledge of which he did not avail himself, therefore he had knowledge. It was fallacious to say that in all cases knowledge and means of knowledge were the same thing. Exception clauses always received a strict construction. If an intending assured, in answering questions which it was agreed should form the basis of the contract, gave an unqualified answer which turned out to be untrue, it was no answer for him to say "I did not know it." The untruth was in such a case fatal, though the assured was unaware of the untruth. Entirely different questions arose with an exception clause. It was always for the insurers to prove the necessary facts to establish the exception; and to escape liability on the present policy they would have had to prove that the insured company knew that McDonald was uninsured. The insurers did not prove that by proving that if the company had made some inquiries they would have known that he was uninsured. He (his lordship) could find no case in which it had ever been held that insurers could take advantage of an exception clause in those circumstances. There was nothing to suggest that quarter sessions had intended to find that the insured company had not acted honestly. He (his lordship) was not prepared to hold that, for the purpose of the exception clause in question, means of knowledge was the same as knowledge. To do so would be to open the door to an admission of doctrines with regard to constructive notice being incorporated in the law of insurance, which would be disastrous. In fact, the insurance company here concerned had not sought to take advantage of the exception clause. No doubt, they had recognised that it did not apply to the facts of the case. The appeal would be allowed and the conviction quashed.

HUMPHREYS, J., gave judgment agreeing that the appeal should be allowed.

COUNSEL: *Harold Lever; B. L. A. O'Malley.*

SOLICITORS: *J. H. Milner & Son*, for *Arnold Lever & Co.*, Blackpool; *Gibson & Weldon*, for *T. L. Child*, Kirkham.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

THE LAW SOCIETY

SPECIAL GENERAL MEETING

Mr. DOUGLAS T. GARRETT, the president, addressed a special general meeting of members of The Law Society at Bell Yard, on the 24th January. He expressed the regret of all members at the death of Mr. Barry O'Brien, an honorary auditor and a constant attendant and speaker at meetings. Mr. O'Brien had often been critical but never captious, and his views had always been constructive and germane to the point. The Society's librarian, Mr. R. A. Cunningham, had retired after more than forty years in the library and sixty years on the Society's staff; he had been a most loyal servant, and members were invited to contribute to a testimonial fund for him.

An appeal for contributions to the Solicitors' War Memorial Fund would reach members in a few days. It would be applied primarily, but to a strictly limited extent, to the erection of a visible memorial in The Law Society's Hall, following the design of the earlier memorial. As part of the visible memorial a book would be compiled giving short particulars of all solicitors and articled clerks who had died as a result of the war. The final statistics showed that 7,455 solicitors and articled clerks had served in the forces; 525 had been killed; and the number of decorations awarded, including mentions in dispatches, was no less than 1,177, a proportion of over one in seven serving members. The whole balance of the fund would be applied for the benefit of solicitors and articled clerks who had suffered through the war, and of the families and dependants of those who had died. The maximum individual subscription was five guineas, or one guinea a year under a seven-year covenant.

The Council had issued a questionnaire to all solicitors in order to obtain evidence to support an increase in the rate of remuneration, if it proved to be justified. Between ten and twelve thousand answers had been received. Members had also received the Society's booklet containing the new Accountant's Certificate Rules and explanatory memorandum, and the law and rules relating to solicitors' accounts. The Council had framed these rules so as to involve as little additional work and expense to solicitors as possible. They hoped that the machinery would work smoothly, but the examination of the accountant's certificates and of the new forms of declaration for practising solicitors would throw much additional work on the office.

THE COMPENSATION FUND

The proposal to establish the Compensation Fund had been included in the Solicitors Act, 1941, coupled with the provisions for compulsory inspection of solicitors' accounts, which the Council had regarded as a necessary and desirable safeguard for the Fund. On the passage of the Bill, however, an amendment had been introduced which had postponed the coming into operation of the inspection of accounts; accordingly the Fund had become operative without the protection of this provision.

The policy of the Compensation Fund Committee had been to pay all possible admissible claims not exceeding £500 in full, and immediately if any hardship were involved, and at the end of each year to pay all other outstanding claims up to £500 in full, and a dividend on all admissible claims for larger amounts. At the end of every year the position had been reviewed and further payments had been made in outstanding cases. Twenty shillings in the pound had been paid in respect of every admissible claim up to the 15th November, 1946. In addition, losses which had been incurred before 1942 but which had not been discovered until after the beginning of that year had been compensated.

There was no doubt that the Fund had done an enormous amount of good not only to the public but also to the profession. The Council had received many grateful letters from claimants, many of whom would otherwise have lost their life savings.

The increase in the work of the Society and its Council during the last twenty years had been enormous. The policy of the Council had been consistently progressive in the sense that it had sought in every way to widen the scope of the services which the Society performed for the profession, the public and the State. The average age of Council members had substantially decreased, and the Council would continue, as it had before the war, to seek to fill vacancies with men in their thirties or early forties.

EXPANSION AND REORGANISATION

There had been an enormous corresponding increase in the work of the secretary, Mr. T. G. Lund, and his staff. The recent return of many solicitors to practice had resulted in a substantially large use being made of the Society's services. The increase in the work was permanent. Accordingly it had recently become necessary to reorganise the work and the staff to relieve the secretary of the intolerable load which he had had to bear, and in respect of which the Council had recently passed a formal resolution of thanks. The work had been divided into two sections: that in which the Society was concerned primarily with public and Government departments, and its professional, financial and domestic work. Each of these branches would be controlled by an under-secretary. One under-secretary would be the former assistant secretary, Mr. McDougall, and the other was being appointed. Additional qualified assistance had also been obtained, and the Council hoped that they would soon be able to supply a really good service.

Such reorganisation and expansion would be expensive, and overhead expenses of every kind had largely increased. The Society's capital reserve was virtually exhausted, and the Council had been regretfully but inexorably obliged to increase the membership subscription by two guineas. Very few criticisms of this decision had been received, and most of them had come from provincial members, who complained against the flat rate of increase for country and London members alike. The Council, however, took the view that since the increased expenditure was occasioned by work which the Society did on behalf of all members, the flat rate was fair. Another criticism which elicited far more sympathy was that, as members holding salaried posts under Government or local authorities paid tax under Sched. E, instead of Sched. D, they could not claim deduction of tax on their subscription, which accordingly cost them nearly twice as much as it cost members practising on their own account. The President considered this grievance to be well founded and felt that something should be done to meet it; the complaint, however lay rather against the practice of the Revenue department than against the Council.

The Council intended to take a poll of members during the current year to decide whether or not the compulsory membership provisions of the Solicitors Act, 1941, s. 3, should be brought into operation. The subject had always been a very contentious one. The proposal to include compulsory membership in the Act had emanated from a member of the Society who had moved a resolution at a special general meeting; the resolution had been carried, and confirmed by a poll. During the passage of the Bill the introduction of compulsory membership had been

postponed until the Lord Chancellor should bring it into force after he was satisfied on a poll that two thirds of all practising solicitors voting were in favour. The Council now felt that they were obliged to carry out this poll.

Compulsory membership implied a revision of the constitution of the Council and the machinery of Council election. The President thought, personally, that this matter was in any case ripe for consideration. The present system of election of metropolitan members, upon whom must inevitably fall the preponderating share of committee work, at least enabled the Council to invite the general body of members to elect solicitors with special experience in as many branches of the law as possible.

During the last six months the Council had tendered evidence to the Departmental Committees on patent law and on procedure in matrimonial causes. The Society's staff had given evidence before the latter committee independently of any control or guidance of the Council—an outstandingly able piece of work which had been to a very large extent reflected in the committee's second interim report.

ADVICE ON PROJECTED LEGISLATION

The Parliamentary Committee was now one of the most important and hardest-worked of all the committees. In addition to settling the Accountant's Certificate Rules they had had and would continue to have many more or less revolutionary legislative proposals to consider. Every Bill proposing fundamental social changes contained points of the most vital concern to the profession, and also many matters upon which The Law Society was able to offer helpful advice or constructive criticism. This activity had long been welcome in Government quarters, with the result that criticisms made in protection of the legitimate interest of the profession were at least considered with respect and attention.

Among the enactments considered by the Parliamentary Committee had been the Finance Act of 1941, s. 25, and the case of *Berkeley* v. *Berkeley*. This misconceived and ill-drafted section had been the subject of several letters and at least two deputations from the Council to the Chancellor of the Exchequer. The Council's principal objection had been that the section appeared to offend against the fundamental principle that a will must be treated as expressing the wishes of the testator at the time of his death. Their representations had been completely unsuccessful, but in 1946 the House of Lords had succeeded in so construing the section that it turned out not to offend against this principle. In the meantime, however, numerous decisions had been given to the contrary by the Chancery Division and the Court of Appeal, resulting in the most complete confusion and the payment by the public of very heavy costs, all of which would have been avoided if the section had been properly drafted in the first instance or the Council's advice to pass a clarifying section had been taken.

The Registrar's Committee had advised the Ministry of Labour, in under a year, on over 2,000 applications for financial grants under the further education and training scheme. At the two final examinations held since the new system of teaching had been introduced into the Society's School of Law, 71·4 per cent. and 80 per cent. of The Law Society's students had been successful.

The General Council of the Bar had recently shown an earnest desire to collaborate with The Law Society in matters of common concern to both branches and had invited the Society to set up a joint standing committee. A cordial reply had been given and joint consultations would soon take place. This development was warmly welcomed by solicitors and the Council would do everything in their power to encourage it.

Mr. CHARLES RUBENS (London) asked whether the subject of solicitors' remuneration would receive early attention. The subscription had just been increased by two-thirds, but solicitors' fees remained at 12½ per cent. above the 1939 scale. The whole basis of the remuneration needed amendment. He suggested that a special meeting of members be called shortly to discuss the matter.

The PRESIDENT replied that he completely agreed, and that the Council were very anxious to deal with the whole question. They thought that the replies to the questionnaire and the necessary additions to the staff would enable them to grasp it. The suggestion of a special meeting would certainly be considered, but the Council envisaged not only an increase in the scale but also alterations in the whole illogical basis of remuneration. He regretted keenly that he was not likely to see a change in his own year of office. It was heart-breaking to read the addresses which his father had delivered on the subject thirty years earlier and to realise how little the profession had moved in the interval.

OBITUARY

MR. R. BREACH

Mr. Robert Breach, solicitor, of Hove, died recently. He was admitted in 1902.

MR. J. H. EVANS

Mr. John Hughes Evans, solicitor, of Messrs. Nath Roberts, Evans & Co., solicitors, of Caernarvon, died on Wednesday, 15th January. He was admitted in 1924 and had been the Coroner for North Caernarvonshire since 1938.

MR. F. O. LANGLEY

Mr. Frederick Oswald Langley, M.C., Metropolitan Police Magistrate at the Old Street Court, died on Wednesday, 22nd January, aged sixty-three. He was called by the Inner Temple in 1907.

LORD SOUTHBOROUGH

The Right Hon. Sir Francis John Stephens Hopwood, first Baron Southborough, of Southborough, in the County of Kent, in the Peerage of the United Kingdom, P.C., G.C.B., G.C.M.G., G.C.V.O., K.C.S.I., died on Friday, 17th January, aged eighty-six. He was admitted in 1882 and began his long and distinguished civil service career three years later as an Assistant Law Clerk to the Board of Trade. Later he was appointed Assistant Solicitor. His many posts included those of Permanent Under-Secretary of State for the Colonies in 1907, and Civil Lord of the Admiralty in 1912, in which year he also became a Privy Councillor.

MR. H. O. C. WALPOLE

Mr. Harry Orford Calibut Walpole, solicitor, of Bury St. Edmunds, died on Saturday, 11th January, aged ninety. He was admitted in 1881.

RULES AND ORDERS

S.R. & O., 1947 No. 77/L.1

BANKRUPTCY, ENGLAND

FEES

THE BANKRUPTCY FEES (AMENDMENT) ORDER, 1947

DATED JANUARY 13, 1947

The Lord Chancellor and the Treasury in pursuance of the powers and authorities vested in them respectively by Section 133 of the Bankruptcy Act, 1914,* and Sections 2 and 3 of the Public Offices Fees Act, 1879,† do hereby, according as the provisions of the above-mentioned enactments respectively authorise and require them, make, sanction and consent to, the following Order :—

1. A paragraph referred to by number in this Order means the paragraph so numbered in the Bankruptcy Fees Order, 1930,‡ as amended by the Bankruptcy Fees (Amendment) Orders, 1931,§ 1932‖ and 1944,¶ and a fee referred to by number in this Order means the fee so numbered in the First Schedule to the Bankruptcy Fees Order, 1930.

2. The following paragraph shall be inserted after paragraph 7 :—

" 7A. If any question arise with regard to the payment of any fee, the Registrar or the Official Receiver may report the matter to the Lord Chancellor and obtain his directions thereon."

3. The following note shall be inserted after Fee No. 10 in Table A :—

" These fees are payable on an application to review on order of discharge or to review the refusal of an order of discharge."

4. The following note shall be inserted after Fee No. 23 in Table A :—

" This fee is not payable for certifying a list of proofs for second or subsequent dividends, unless additional proofs are certified, nor for certifying lists in respect of separate estates in the same bankruptcy."

5. The word " issuing " shall be substituted for the word " executing " in Fee No. 2 in Table C.

6. The following note shall be substituted for the note to Fee No. 6 in Table C :—

" This fee is not payable,

(*a*) More than once under each receiving order ;

(*b*) Until after a hearing at which the debtor has appeared and has been examined."

7. This Order may be cited as the Bankruptcy Fees (Amendment) Order, 1947, and shall come into operation on the 1st day of February, 1947.

Dated this 13th day of January, 1947.

Jowitt, C.

J. W. Snow
C. James Simmons } Lords Commissioners of His Majesty's Treasury.

* 4 & 5 Geo. 5, c. 59.
† 42 & 43 Vict. c. 58.
‡ S.R. & O. 1930 (No. 604) p. 106.
§ S.R. & O. 1931 (No. 520) p. 77.
‖ S.R. & O. 1932 (No. 801) p. 127.
¶ S.R. & O. 1944 (No. 255) I, p. 22.

PRACTICE DIRECTION

With reference to the Practice Direction of the 14th November, 1946 [90 SOL. J. 572], copies of documents for use in the court may be made by any photographic process provided the copies are of the same size as the original.

GODDARD, C.J.
GREENE, M.R.

24th January, 1947.

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time :—

CHESHIRE AND LANCASHIRE COUNTY COUNCILS (RUNCORN-WIDNES BRIDGE, ETCETERA) BILL [H.L.]
COMMERCIAL GAS BILL [H.L.]
DUDLEY CORPORATION BILL [H.L.]
HAVANT AND WATERLOO BILL [H.L.]
HOVE CORPORATION BILL [H.L.]
NAZEING WOOD OR PARK BILL [H.L.]
SOUTH METROPOLITAN GAS BILL [H.L.]
SOUTHEND-ON-SEA CORPORATION BILL [H.L.]
SOUTHERN RAILWAY BILL [H.L.]
SOUTH-WESTERN MIDDLESEX CREMATORIUM BILL [H.L.
SUNDERLAND CORPORATION BILL [H.L.]

HOUSE OF COMMONS

Read First Time :—

BIRTHS AND DEATHS REGISTRATION BILL [H.C.] [23rd January.
To provide for an additional type of birth certificate.

COUNTY COUNCILS ASSOCIATION EXPENSES (AMENDMENT) BILL [H.C.] [23rd January.
To alter the maximum annual subscription which county councils may pay to the County Councils Association.

INDUSTRIAL ORGANISATION BILL [H.C.] [24th January.
To provide for the establishment of development councils to exercise functions for improving or developing the service rendered to the community by industries and for other purposes in relation thereto, for making funds available for certain purposes in relation to industries for which there is no development council, for the disposal of any surplus of funds levied under emergency provisions for encouragement of exports, for the making of grants to bodies established for the improvement of design, and for purposes connected therewith and consequential thereon.

Read Second Time :—

STATISTICS OF TRADE BILL [H.C.] [21st January.
MALTA (RECONSTRUCTION) BILL [H.C.] [24th January.

Read Third Time :—

AGRICULTURAL WAGES (REGULATION) BILL [H.C.] [22nd January.
GREENWICH HOSPITAL BILL [H.L.] [23rd January.
PENSIONS (INCREASE) BILL [H.C.] [23rd January.
ROAD TRAFFIC (DRIVING LICENCES) BILL [H.C.] [22nd January.
TRUSTEE SAVINGS BANKS BILL [H.L.] [23rd January.

QUESTIONS TO MINISTERS

NATIONALITY CONFERENCE

Colonel HUTCHINSON asked the Secretary of State for the Home Department if he will make a further statement regarding the conference of experts which was to be set up last year on the question of married women's nationality.

Mr. EDE : The conference will open in London on 3rd February. In addition to its work on the question of the nationality of married women, it will consider other nationality matters of general interest to the members of the British Commonwealth. [21st January.

LAW OFFICERS (COURT CASES)

Colonel CROSTHWAITE-EYRE asked the Attorney-General how many cases were personally conducted by him in any court during the year 1945 ; how many were conducted by the Solicitor-General ; and what were the similar figures in respect of the Attorney-General and the Solicitor-General during the year 1938.

The ATTORNEY-GENERAL : My learned friend the Solicitor-General and I took office on 4th August, 1945, and, during the three months of the Michaelmas term, commencing 14th October, I personally conducted fourteen cases, which occupied twenty-nine days in court. During this term I was out of the country for twenty-three days in connection with the Nuremberg trial. My learned friend, the Solicitor-General, personally conducted twenty-two cases, which occupied twenty-two days in court. During the whole of 1938, the then Attorney-General personally conducted sixty-seven cases, which occupied ninety-four days in court. I regret that I am unable to supply the similar information relating to the then Solicitor-General, owing to the destruction by enemy action of the relevant records. [23rd January.

ESTATE DUTY (WORKS OF ART)

Mr. MARTIN asked the Chancellor of the Exchequer whether he will consider accepting pictures or other artistic objects, in suitable cases, in lieu of death duties, thereby improving municipal as well as national art collections.

Mr. DALTON : No, sir. Works of art given to municipal or national collections are already exempt from death duties. [23rd January.

SOLICITORS ACT, 1941 (S. 3)

Mr. PALMER asked the Attorney-General when it is proposed to bring s. 3 of the Solicitors Act, 1941, into operation.

The ATTORNEY-GENERAL : Before subss. (1), (2) and (3) of s. 3 of the Solicitors Act, 1941, can be brought into operation, the Lord Chancellor must be satisfied, on a poll of all practising solicitors taken by the Council of The Law Society, that not less than two-thirds of those voting are in favour of the provisions coming into operation. Owing to the absence from their practices of a large number of solicitors on national service, the council have not yet taken this poll, but I understand that they intend to do so next summer. [23rd January.

TRUSTEE ACT

Sir I. FRASER asked the Chancellor of the Exchequer if he will now set up a committee to consider the Trustee Acts and, if thought fit, to make recommendations for their amendment.

Mr. DALTON : No, sir.

Sir I. FRASER : Does the right hon. gentleman appreciate that beneficiaries under the trusts and charities are suffering very greatly ; and in view of the change in the value of money, which he has brought about, does he not think the time has come to give some very serious thought, within the department and outside, to this important matter ?

Mr. DALTON : We have discussed this matter before and I have suggested to the House that we must consider the additional risks that would be involved in any extension of the trustee list, but I have also said in reply to the right hon. member for West Bristol (Mr. Stanley) that I do not exclude rational reconsideration of the matter. I have the matter under consideration now, but I must frankly tell the House that I think there are very great difficulties and very serious objections in the way of any extension of the trustee list. [23rd January.

JUSTICES' CLERKS (FUNCTIONS)

Mr. YATES asked the Secretary of State for the Home Department what steps he takes, by circularising magistrates or otherwise, to ensure that magistrates' clerks are never permitted to act other than in an advisory capacity.

Mr. EDE : I understand that my hon. friend has in mind the question of expressions of opinion by clerks to justices about the policy embodied in laws or regulations under which proceedings are taken before the magistrates. The conduct of a clerk in court is a matter for the magistrates, whose servant he is. I have no reason to think that magistrates are not fully aware of their responsibilities in this matter, and I do not consider that any suggestions on my part are required to inform them of these responsibilities.

Mr. YATES : In view of the complaint in a recent case, particulars of which I gave, does not the Minister think that specific advice should be tendered to the magistrates' clerk ?

Mr. EDE : No, sir. I think the duty of controlling the clerk must rest with the magistrates, and, when in court, particularly, with the chairman. I hope that the publicity which the hon. member's question has given to the matter will encourage some of these people in suitable cases to correct the clerk when he interferes unduly with the course of justice.

Mr. HECTOR HUGHES : Is my right hon. friend aware that, in some instances, the clerk retires with the justices to their room and takes part in their deliberations ? Will he not agree that this is an undesirable practice and will he not take steps to stop it ?

Mr. EDE : The magistrates' clerk should not retire with the magistrates unless requested to do so by the bench. If he does so, in his own interests, he should confine such remarks as he makes to advice on points of law that may arise. Of course, what goes on in the magistrates' room is secret and, as a magistrate myself, I know that the habits of clerks differ in this matter, but it is the duty of the magistrates, if the clerk presumes on his position, to put him in his proper place. [23rd January.

NOTES AND NEWS

Honours and Appointments

The Colonial Office announces that Mr. B. V. RHODES has been appointed a District Judge, Malaya, and that Mr. R. WINDHAM, formerly Relieving President, has been appointed President, District Courts, Palestine.

The Rt. Hon. LORD TERRINGTON, C.B.E., has been appointed Chairman of the Court of Inquiry into the Road Haulage Industry. He was admitted in 1923 and has been Principal Assistant Secretary to the Minister of Labour.

BRITISH PROPERTY IN SIAM

The Board of Trade announces that His Majesty's Government and the Governments of Australia and India have signed an agreement with the Siamese Government in Bangkok which gives effect to certain undertakings of the latter Government in respect of British financial, commercial and property interests in Siam. The agreement provides arrangements for dealing with claims to restitution of British property and to compensation for damage thereto or for personal prejudice or loss. A further announcement will be made shortly by the Board of Trade on the detailed procedure for presenting claims.

A general meeting of The Law Society Cricket Club (Acting Hon. Secretary: W. Emrys Jones, Tel. Whi. 5484, Ext. 135; Molesey 3690) will be held on Monday, 10th February, 1947, at 6 p.m., at The Court Room, 60, Carey Street, W.C.2. The agenda includes consideration of the rules; appointment of officers and of the general committee; consideration of the provisional fixtures for 1947 already arranged; consideration of reports on club gear, membership and finances; arrangements for the forthcoming season; and other business. It is hoped that there will be a good attendance of old and prospective new members, and a cordial invitation to attend is extended to everyone interested.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1947

No. 77. **Bankruptcy Fees** (Amendment) Order. January 13.
No. 74. **Control of Building Operations** (No. 8) Order. January 15.
No. 75. Control of Building Operations (Proceedings by Local Authorities) (No. 1) Order. January 15.
No. 64. **Trading with the Enemy.** Germany. Licence. January 11.

DRAFT STATUTORY RULES AND ORDERS, 1947

Double Taxation Relief (Estate Duty) (South Africa) Order.

Double Taxation Relief (Taxes on Income) (South Africa) Order.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

COURT PAPERS

SUPREME COURT OF JUDICATURE

HILARY SITTINGS, 1947

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.			Emergency Rota	Appeal Court I	Mr. Justice Vaisey
Mon.,	Feb.	3	Mr. Hay	Mr. Jones	Mr. Reader
Tues.,	,,	4	Farr	Reader	Hay
Wed.,	,,	5	Blaker	Hay	Farr
Thurs.,	,,	6	Andrews	Farr	Blaker
Fri.,	,,	7	Jones	Blaker	Andrews
Sat.,	,,	8	Reader	Andrews	Jones

			Group A		Group B	
			Mr. Justice Roxburgh	Mr. Justice Wynn-Parry	Mr. Justice Evershed	Mr. Justice Romer
Date.			*Non-Witness.*	*Witness.*	*Witness.*	*Non-Witness*
Mon.,	Feb.	3	Mr. Andrews	Mr. Blaker	Mr. Hay	Mr. Farr
Tues.,	,,	4	Jones	Andrews	Farr	Blaker
Wed.,	,,	5	Reader	Jones	Blaker	Andrews
Thurs.,	,,	6	Hay	Reader	Andrews	Jones
Fri.,	,,	7	Farr	Hay	Jones	Reader
Sat.,	,,	8	Blaker	Farr	Reader	Hay

STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price Jan. 28 1947	Flat Interest Yield £ s. d.	‡ Approximate Yield with redemption £ s. d.
British Government Securities				
Consols 4% 1957 or after	FA	116½	3 8 8	2 1 1
Consols 2½%	JAJO	98½	2 10 11	—
War Loan 3% 1955–59	AO	10[illegible]	2 14 10	1 13 10
War Loan 3½% 1952 or after	JD	108½	3 4 6	1 19 5
Funding 4% Loan 1960–90	MN	121½	3 5 10	2 1 8
Funding 3% Loan 1959–69	AO	10[illegible]	2 14 11	2 2 0
Funding 2½% Loan 1952–57	JD	105⅝	2 12 0	1 12 7
Funding 2½% Loan 1956–61	AO	10[illegible]	2 7 5	1 16 3
Victory 4% Loan Av. life 18 years	MS	122xd	3 5 7	2 9 5
Conversion 3½% Loan 1961 or after	AO	115	3 0 10	2 4 10
National Defence Loan 3% 1954–58	JJ	10[illegible]	2 15 8	1 12 4
National War Bonds 2½% 1952–54	MS	104xd	2 8 1	1 15 0
Savings Bonds 3% 1955–65	FA	107½	2 15 10	1 19 4
Savings Bonds 3% 1960–70	MS	10[illegible]xd	2 15 4	2 5 8
Treasury 2½%	AO	99½	2 10 3	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	101	2 19 5	—
Guaranteed 2½% Stock (Irish Land Act, 1903)	JJ	101	2 14 5	—
Redemption 3% 1986–96	AO	116½	2 11 6	2 6 11
Sudan 4½% 1939–73 Av. life 16 years	FA	124	3 12 7	2 12 10
Sudan 4% 1974 Red. in part after 1950	MN	118	3 7 10	—
Tanganyika 4% Guaranteed 1951–71	FA	107	3 14 9	2 2 6
Lon. Elec. T.F. Corp. 2½% 1950–55	FA	101⅛	2 9 3	2 0 0
Colonial Securities				
*Australia (Commonw'h) 4% 1955–70	JJ	114	3 10 2	2 3 5
Australia (Commonw'h) 3½% 1964–74	JJ	112	2 18 0	2 7 6
*Australia (Commonw'h) 3% 1955–58	AO	106	2 16 7	2 4 2
†Nigeria 4% 1963	AO	124	3 4 6	2 5 6
*Queensland 3½% 1950–70	JJ	104	3 7 4	2 2 6
Southern Rhodesia 3½% 1961–66	JJ	115	3 0 10	2 4 10
Trinidad 3% 1965–70	AO	112	2 13 7	2 4 5
Corporation Stocks				
*Birmingham 3% 1947 or after	JJ	101½	2 19 1	—
*Leeds 3½% 1958–62	JJ	109	2 19 8	2 6 1
*Liverpool 3% 1954–64	MN	105	2 17 2	2 4 3
Liverpool 3½% Red'mable by agreement with holders or by purchase	JAJO	130	2 13 10	—
London County 3% Con. Stock after 1920 at option of Corporation	MSJD	102	2 18 10	—
*London County 3½% 1954–59	FA	110	3 3 8	2 0 11
*Manchester 3% 1941 or after	FA	101½xd	2 19 1	—
*Manchester 3% 1958–63	AO	108	2 15 7	2 4 5
Met. Water Board "A" 1963–2003	AO	109	2 15 1	2 6 2
* Do. do. 3% "B" 1934–2003	MS	102	2 18 10	—
* Do. do. 3% "E" 1953–73	JJ	105	2 17 2	2 2 1
Middlesex C.C. 3% 1961–66	MS	109	2 15 1	2 4 10
*Newcastle 3% Consolidated 1957	MS	107	2 16 1	2 5 4
Nottingham 3% Irredeemable	MN	112	2 13 7	—
Sheffield Corporation 3½% 1968	JJ	118	2 19 4	2 8 0
Railway Debenture and Preference Stocks				
Gt. Western Rly. 4% Debenture	JJ	123½	3 4 9	—
Gt. Western Rly. 4½% Debenture	JJ	125½	3 11 9	—
Gt. Western Rly. 5% Debenture	JJ	136½	3 13 3	—
Gt. Western Rly. 5% Rent Charge	FA	134½	3 14 4	—
Gt. Western Rly. 5% Cons. G'rteed.	MA	132½	3 15 6	—
Gt. Western Rly. 5% Preference	MA	121½	4 2 4	—

* Not available to Trustees over par.
† Not available to Trustees over 115.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated the earliest date, in the case of other Stocks, as at the latest date.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertisement Offices: 88–90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.

Annual Subscription: Inland, £3; Overseas, £3 5s. (payable yearly, half-yearly or quarterly in advance). Solicitors in H.M. Forces, Special rate. £1 17s. 6d. per annum.

Advertisements must be received first post Tuesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).